

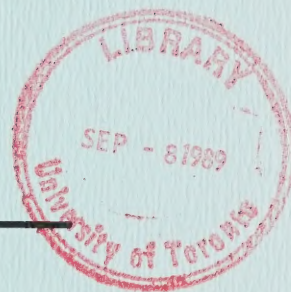
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Ontario

ENVIRONMENTAL ASSESSMENT BOARD



VOLUME: 127

DATE: Monday, August 28th, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member


A. KOVEN, Member

FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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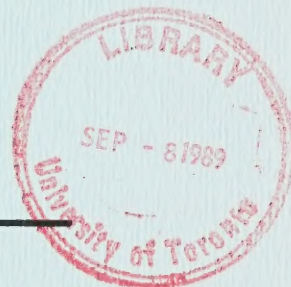
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Monday, August 28th,
1989, commencing at 1:00 p.m.

VOLUME 127

BEFORE:

| | |
|------------------------------|----------|
| MR. MICHAEL I. JEFFERY, Q.C. | Chairman |
| MR. ELIE MARTEL | Member |
| MRS. ANNE KOVEN | Member |

A P P E A R A N C E S

| | |
|-----------------------|---|
| MR. V. FREIDIN, Q.C.) | MINISTRY OF NATURAL |
| MS. C. BLASTORAH) | RESOURCES |
| MS. K. MURPHY) | |
| MS. Y. HERSCHER) | |
| MR. B. CAMPBELL) | MINISTRY OF ENVIRONMENT |
| MS. J. SEABORN) | |
| MR. R. TUER, Q.C.) | ONTARIO FOREST INDUSTRY |
| MR. R. COSMAN) | ASSOCIATION and ONTARIO |
| MS. E. CRONK) | LUMBER MANUFACTURERS' |
| MR. P.R. CASSIDY) | ASSOCIATION |
| MR. H. TURKSTRA | ENVIRONMENTAL ASSESSMENT BOARD |
| MR. J. WILLIAMS, Q.C. | ONTARIO FEDERATION OF |
| MR. B.R. ARMSTRONG | ANGLERS & HUNTERS |
| MR. G.L. FIRMAN | |
| MR. D. HUNTER | NISHNAWBE-ASKI NATION and WINDIGO TRIBAL COUNCIL |
| MR. J.F. CASTRILLI) | |
| MS. M. SWENARCHUK) | FORESTS FOR TOMORROW |
| MR. R. LINDGREN) | |
| MR. P. SANFORD) | KIMBERLY-CLARK OF CANADA |
| MS. L. NICHOLLS) | LIMITED and SPRUCE FALLS |
| MR. D. WOOD) | POWER & PAPER COMPANY |
| MR. D. MacDONALD | ONTARIO FEDERATION OF LABOUR |
| MR. R. COTTON | BOISE CASCADE OF CANADA LTD. |
| MR. Y. GERVAIS) | ONTARIO TRAPPERS |
| MR. R. BARNES) | ASSOCIATION |
| MR. R. EDWARDS) | NORTHERN ONTARIO TOURIST |
| MR. B. McKERCHER) | OUTFITTERS ASSOCIATION |

APPEARANCES: (Cont'd)

| | |
|--------------------------|--|
| MR. L. GREENSPOON) | NORTHWATCH |
| MS. B. LLOYD) | |
| MR. J.W. ERICKSON, Q.C.) | RED LAKE-EAR FALLS JOINT |
| MR. B. BABCOCK) | MUNICIPAL COMMITTEE |
| MR. D. SCOTT) | NORTHWESTERN ONTARIO |
| MR. J.S. TAYLOR) | ASSOCIATED CHAMBERS OF COMMERCE |
| MR. J.W. HARBELL) | GREAT LAKES FOREST |
| MR. S.M. MAKUCH) | |
| MR. J. EBBS | ONTARIO PROFESSIONAL FORESTERS ASSOCIATION |
| MR. D. KING | VENTURE TOURISM ASSOCIATION OF ONTARIO |
| MR. D. COLBORNE | GRAND COUNCIL TREATY #3 |
| MR. R. REILLY | ONTARIO METIS & ABORIGINAL ASSOCIATION |
| MR. H. GRAHAM | CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION) |
| MR. G.J. KINLIN | DEPARTMENT OF JUSTICE |
| MR. S.J. STEPINAC | MINISTRY OF NORTHERN DEVELOPMENT & MINES |
| MR. M. COATES | ONTARIO FORESTRY ASSOCIATION |
| MR. P. ODORIZZI | BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY |

APPEARANCES: (Cont'd)

| | |
|---------------------|--|
| MR. R.L. AXFORD | CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS |
| MR. M.O. EDWARDS | FORT FRANCES CHAMBER OF COMMERCE |
| MR. P.D. McCUTCHEON | GEORGE NIXON |
| MR. C. BRUNETTA | NORTHWESTERN ONTARIO TOURISM ASSOCIATION |

I N D E X O F P R O C E E D I N G S

| <u>Witness:</u> | <u>Page No.</u> |
|---|-----------------|
| <u>BRUCE ADAMSON,</u> <u>SERGE TENAGLIA,</u> <u>NEVILLE WARD,</u> <u>GORDON PYZER,</u> <u>DAVID M. HOGG, Recalled</u> | 21508 |
| Cross-Examination by Mr. Tuer | 21508 |
| Cross-Examination by Mr. Edwards | 21556 |

SCOPING SESSION (Panel 15)

| | |
|------------------------------|-------|
| The Chairman..... | 21625 |
| Mr. Cassidy (OFIA/OLMA)..... | 21631 |
| Mr. Edwards (NOTOA)..... | 21632 |
| Mr. Quinney (OFAH)..... | 21635 |
| Ms. Seaborn (MOE)..... | 21637 |
| Mr. Freidin (MNR)..... | 21638 |
| The Chairman..... | 21678 |

I N D E X O F E X H I B I T S

| <u>Exhibit No.</u> | <u>Description</u> | <u>Page No.</u> |
|--------------------|---|-----------------|
| 688A | OFIA Interrogatory Question No. 8 (Panel 14). | 21507 |
| 773 | Photocopies of slides using during the evidence of Mr. Ward. | 21508 |
| 774 | OFIA/OLMA Interrogatory Nos. 1, 2 and 3 and answers thereto. | 21536 |
| 775 | MOE Interrogatory No. 6 and answer thereto. | 21538 |
| 776 | OFIA Interrogatory Question No. 5, NOTOA Question No. 25 and 27 and answers thereto. | 21551 |
| 777 | One page entitled: Strategy LM-90206 taken from NOTOA Interrogatory No. 25. | 21556 |
| 778 (reserved) | NOTOA Interrogatory No. 1 and answer thereto. | 21572 |
| 779 | Memorandum from Peter Waring to G.G. Pyzer dated June 27, 1989 re: travel on closed road charges. | 21599 |

1 ---Upon commencing at 1:00 p.m.

2 THE CHAIRMAN: Good afternoon. Be
3 seated, please.

4 Ladies and gentlemen, just before we
5 start today I want to confirm with you the schedule as
6 I believe and hopefully most counsel have already been
7 advised, the Board will be unable to sit on Thursday of
8 this week. As a consequence, we are proposing to do
9 the following:

10 We have reviewed to some extent the
11 cross-examinations which are to take place with respect
12 to Panel 14 and we intend to sit today through the
13 afternoon with the odd short break through to seven
14 o'clock at which time we will cease with the
15 cross-examinations of this panel and go into the
16 scoping session with respect to Panel 15.

17 We don't anticipate that the scoping
18 session will last more than an hour and, therefore,
19 will break for the night at around eight o'clock or at
20 any time after the scoping session is finished.

21 Tomorrow we will commence at 8:30 and
22 probably sit through the day until around six o'clock.
23 On Wednesday, we would propose to sit at eight o'clock
24 in the morning and rise no later than 3:00 p.m. and, in
25 that fashion, we should be able to make up for a good

1 deal of the lost ground that would be occasioned by us
2 not sitting on Thursday.

3 We will, of course, review the order of
4 cross-examinations with the various parties, but it is
5 our anticipation that we will commence with you, Mr.
6 Tuer, this afternoon and I believe Mr. Edwards is in a
7 position to commence his cross-examination around 4:00
8 p.m.

9 We would continue on through until 7:00
10 p.m. with him and then all day tomorrow with Mr.
11 Edwards and hopefully we might be in a position to
12 finish with him on Wednesday; if not, then we would
13 continue on with Mr. Edwards next Monday, and then we
14 would be going on to either Ms. Swenarchuk or the
15 Federation, I am not sure which at this point. So we
16 will attempt to get past 14 as expeditiously as
17 possible.

18 Are there any further preliminary
19 matters?

20 MS. BLASTORAH: Just one housekeeping
21 matter, Mr. Chairman. I have now been able to obtain
22 copies of -- extra copies of a few of the exhibits that
23 we marked during the evidence-in-chief of Panel 14.

24 Exhibit 685 is the Resource Access Roads
25 Policy and Implementation Strategies and Guidelines,

1 and at the time that we filed that exhibit I only had
2 one copy for the exhibit copy. I now have three copies
3 for the Board and I also have been able to obtain a few
4 additional copies should any of the parties require it
5 for cross-examination.

6 THE CHAIRMAN: Very well.

7 MS. BLASTORAH: In addition, Exhibit 684,
8 which is the Guidelines and Criteria for Approvals
9 Under the Lakes and Rivers Improvement Act, I now have
10 three copies of that for the Board's use, as well as
11 three additional copies for purposes of
12 cross-examination.

13 As I mentioned, at the time this document
14 was referred to or was filed we did file one complete
15 copy of the document, only the Table of Contents was
16 provided in the statement of evidence and a complete
17 copy was made available in the reading room.

18 I also wish to file a copy of OFIA
19 Interrogatory No. 8 in relation to Panel 14. When we
20 marked our package of exhibits -- or our package of
21 interrogatories as Exhibit 688 at the time of the
22 evidence-in-chief that was inadvertently omitted from
23 that package. So perhaps we could mark that 688A.

24 THE CHAIRMAN: Very well.

25 MS. BLASTORAH: And for the convenience

1 of the parties, I have some extra copies of that just
2 in case they don't have their copy with them.

3 (handed)

4 ---EXHIBIT NO. 688A: OFIA Interrogatory Question No. 8
5 (Panel 14).

6 MS. BLASTORAH: And one final matter. I
7 had also advised that I would make available to the
8 parties photocopies of the slides used during the
9 evidence of Mr. Ward and we now have those available.
10 That's the ones that are not included in the statement
11 of evidence. So I would propose that we could mark
12 those as an exhibit as well.

13 We already have made hard copy of the
14 photographs available to the Board and that was marked,
15 but since they are two different things, really one
16 being actual photographs and one being photocopies,
17 perhaps we should mark them.

18 THE CHAIRMAN: Very well. Exhibit 773.

19 MS. BLASTORAH: Since we are marking it
20 separately I may as well provide separate copies to the
21 Board as well, even though you have the hard copies of
22 the photographs.

23 THE CHAIRMAN: Okay.

24 MS. BLASTORAH: Thank you, Mr. Chairman.

25 (handed)

1 ---EXHIBIT NO. 773: Photocopies of slides used during
2 the evidence of Mr. Ward.

3 THE CHAIRMAN: Thank you, Ms. Blastorah.
4 Mr. Tuer?

5 BRUCE ADAMSON,
6 SERGE TENAGLIA,
7 NEVILLE WARD,
 GORDON PYZER,
 DAVID M. HOGG, Recalled

8 CROSS-EXAMINATION BY MR. TUER:

9 Q. I want to start, panel, by talking a
10 little bit about the various kinds of roles identified
11 in the Public Lands Act and otherwise. This material
12 was in your written material, Mr. Adamson, but it may
13 be something that Mr. Tenaglia wants to talk about.

14 I just want to gather together some of
15 the various things that have been discussed in this
16 connection from the point of view of the industry which
17 is building these roads and operating in the forest.

18 First of all, it's my understanding that
19 there are three kinds of roads that we are concerned
20 with: public forest roads, private forest roads and
21 unclassified forest roads. Are you going to respond to
22 these questions, Mr. Adamson, or is Mr. Tenaglia?

23 MR. ADAMSON: A. I will answer them.

24 Q. Go ahead.

25 A. Yes, there's three classifications

1 set out in the Public Lands Act.

2 Q. And those are found in Exhibit 685 in
3 bulletin No. LM-90521. Would you look at that, please.

4 A. Yes.

5 Q. Yes. Now, am I correct that private
6 roads are not governed by the Highway Traffic Act, that
7 the Highway Traffic Act has no application to private
8 forest roads?

9 A. That's correct.

10 Q. But that the Highway Traffic Act does
11 have application to roads designated as public forest
12 roads and unclassified forest roads?

13 A. It has application to unclassified
14 roads and there are sections of the Highway Traffic Act
15 that are excluded on public forest roads.

16 Q. Except to the extent that sections
17 are excluded, the Act does apply--

18 A. Yes.

19 Q. --to public forest roads?

20 A. Yes.

21 Q. Now, I understand from the written
22 material and from the evidence that approximately 90
23 per cent of these three classes of roads which are
24 constructed are constructed by industry on an annual
25 basis?

1 A. That's an approximation, yes.

2 Q. That's all I am asking for. And 10
3 per cent by the Ministry of Natural Resources directly
4 or through persons it contracts to build roads?

5 A. Yes.

6 Q. Now, with respect to roads that are
7 constructed in FMAs, is it the case that the majority
8 of those roads by far would fall into the
9 classification of unclassified?

10 A. That's my understanding, but perhaps
11 Mr. Tenaglia could speak with more knowledge.

12 Q. Mr. Tenaglia, would you agree with
13 that?

14 MR. TENAGLIA: A. Yes, I would, but I
15 don't have any firm figures.

16 Q. I just want to get a broad picture.
17 But, generally speaking, most of the roads that are
18 constructed in FMAs come under the classification of
19 unclassified?

20 A. That's right.

21 Q. Those roads which are constructed by
22 the timber companies are constructed to the standard
23 required by them for their particular operations; is
24 that so?

25 A. For the most part, yes, I would agree

1 with that.

2 Q. Well, is it not the case that except
3 in the circumstance where there is an agreement with
4 the MNR to the contrary, that the timber company builds
5 its roads to meet the purposes for which the road is
6 being built?

7 A. Correct. It's just where there is
8 those exceptions that--

9 Q. Right.

10 A. --that standard may be above what the
11 industry might need.

12 Q. So carrying on from there, and
13 excluding those exceptions that may appear by way of
14 agreement, there is no set standard to which the
15 industry must conform in the construction of any forest
16 road that it's building?

17 It may build a road that it anticipates
18 it will need for five years; it may build a road that
19 it anticipates it may need for 15 years. That is the
20 criteria, is -- the criterion; is it not, by which the
21 company determines the standard to which it's going to
22 be built?

23 A. Yes.

24 Q. And in those exceptions that you
25 mentioned, can you expand on that just a little bit as

1 to where that occurs?

2 A. I don't have any particular examples
3 that come to mind, but if there is a particular -- or a
4 perceived need for a higher standard road to meet other
5 users' concerns that exceeds the industry's standards,
6 then that road may be built to a higher standard.

7 Q. And in that event would it not be the
8 case that the company would obtain financial
9 contribution from the MNR to meet that higher standard?

10 A. That's quite possible, yes.

11 Q. Well, it's the case; is it not?

12 A. Again, I don't have any specific
13 examples that I can draw from.

14 Q. All right. Can you help us with
15 that, Mr. Adamson?

16 MR. ADAMSON: A. It may not necessarily
17 be the case, and I can think in terms of bridges. If
18 the road is required for long term it may not be --
19 industry may only require it for a short term. There
20 may be some agreement reached to share in the costs of
21 construction and it may not be financial, it might be
22 use of materials or something like that.

23 Q. All right. But it has a financial
24 connotation to it?

25 A. Yes.

1 Q. Sure, okay. Because normally you
2 would not expect the industry to -- by itself, have to
3 bear the burden of constructing roads for uses other
4 than its own?

5 A. Yes, that's been the guiding
6 philosophy I think.

7 Q. That's the guiding philosophy. Now,
8 it arises by that practice - and again I'm pulling some
9 of this out of the written material - it is obvious, as
10 a matter of practice, that a company which builds a
11 forest road is going to maintain and patrol that road
12 for its own uses?

13 A. Yes.

14 Q. And is it not the case that it
15 doesn't have any obligation to maintain that road for a
16 higher use or a different use merely because somebody
17 else wants to use it for a different purpose?

18 Let me give you an example. A road may
19 be passable with a large lumber machine, lumber
20 carrying machine of some sort or other with four-wheel
21 drives and large tires and so forth, which may be
22 totally impassable for a jeep or half-ton truck or some
23 such vehicle that somebody else wants to drive along
24 that road in order to get, say, to his trap lines.

25 But, do you agree in that situation that

1 the company does not have any obligation to improve
2 that road to the extent necessary to permit that
3 half-ton truck to go through?

4 A. In a general sense, that's correct;
5 yes.

6 Q. In other words, it builds the road to
7 its standard, for its purpose and it maintains the road
8 to the standard necessary for its purposes; is that so?

9 A. Yes. In terms of standard, you're
10 referring to like geometric standard?

11 Q. Geometric.

12 A. Yes.

13 Q. Throughout.

14 A. Yes. In terms of environmental
15 standard, the guidelines apply.

16 Q. Of course. I am only talking about
17 the geometric standard.

18 A. Yes.

19 Q. Now, in the case of private roads, my
20 understanding is that the company enters into a land
21 use permit?

22 A. Yes.

23 Q. And I understand also from what I
24 have seen in your material that invariably that land
25 use permit has a condition that requires the company to

1 make the road available for other users, for the
2 public?

3 A. Yes, unless the district manager
4 approves otherwise.

5 Q. Subject to restrictions placed on it
6 by the district manager of MNR?

7 A. Yes.

8 Q. But, again, am I not correct that the
9 mere fact that the public has the right to use that
10 road does not impose any obligation on the company to
11 maintain that road to any geometric standard?

12 A. That's a difficult question.

13 Q. Well, we've just been through it and
14 I think you agreed with me--

15 A. Yes.

16 Q. --that the --

17 A. I'm thinking of roads that the
18 industry would maintain and people are aware they
19 maintain them.

20 Our solicitors advise us now about
21 warning people of hazards, and I would suggest if there
22 were hazards on an industry-maintained road, they would
23 owe a duty of care to people that might use that road,
24 whether they be public or...

25 Q. We will come to the signage and the

1 warning aspect of it in a minute.

2 But insofar as the MNR is concerned, the
3 mere fact that you have a private road with a land use
4 agreement which requires the company, subject to the
5 restrictions placed by the MNR, that the public has the
6 right to use those roads, that does not create any
7 obligation on the company to maintain the road to any
8 higher geometric standard than it would otherwise for
9 its own purposes?

10 A. Yes, that would be a correct
11 statement.

12 Q. All right. Now, there are -- and I
13 don't want you to get into any discussion about what
14 your solicitor tells you might be the case as far as
15 liability is concerned, I just want you to tell me
16 what the practice is.

17 Where you have a road that is, for
18 example, an unclassified road in an FMA that is really
19 not a very passable road, do you sign that road: Use
20 At Your Own Risk.

21 A. The practice varies. It's up to the
22 district manager to determine whether roads require
23 signing in their districts or not. Some districts sign
24 the roads: Use At Your Own Risk; other districts
25 don't. Some roads within a particular district may be

1 signed and others may not.

2 Q. But am I hearing you correctly that
3 that is the decision for the district manager to make?

4 A. Yes.

5 Q. It's not the company's decision; is
6 that so?

7 A. That's correct. I've also seen signs
8 that have been installed by companies on their roads
9 that state that.

10 Q. Well, we are talking about their
11 roads, we are talking about road on FMAs.

12 A. Yes.

13 Q. But is it not the case that it's the
14 district manager who decides what sign is going to go
15 on that road?

16 A. Not in all cases. I think some of
17 these industry signs I have seen up, I would think that
18 they had made that decision themselves.

19 Q. Sure. But so far as any obligation
20 is concerned, the MNR doesn't impose any direction or
21 obligation on the company to sign that road; is that
22 not so?

23 MR. TENAGLIA: A. If I can just add one
24 thing.

25 Q. Sure.

1 A. If the road is being used by the
2 company I believe the responsibility rests with the
3 company to advise the public of any potential concerns.

4 Now, if that road is not -- is no longer
5 being used by the company then --

6 Q. We will come to that. We will come
7 to that in a minute. I am talking about a road that is
8 being actively used--

9 A. By the company?

10 Q. --by the company. Does the MNR have
11 any directive to industry which says that the company
12 must sign that road?

13 A. No, they don't.

14 Q. And the district manager himself
15 decides whether or not MNR is going to put up a sign?

16 A. Well, if the industry is using that
17 road, then they are responsible for what occurs on that
18 road.

19 Q. Well, where do you find that, sir?

20 A. I don't have it anywhere.

21 Q. Okay. That's your opinion?

22 A. Yes, it is.

23 Q. Okay. On what basis do you arrive at
24 that opinion?

25 A. I guess the timber management plan

1 would identify who is responsible for the use or
2 maintenance of that particular road.

3 Q. Sure, that's what we were talking
4 about earlier where you have an agreement between the
5 Ministry and the company in the five-year plan?

6 A. Yes.

7 Q. Okay. I'm not talking about that,
8 that's simple because we know where we stand in that
9 situation.

10 I am talking about situations where there
11 is nothing in the five-year plan. Is there anything
12 else, in a general way, which imposes on industry -- is
13 imposed on industry by the Ministry to maintain a road
14 or to sign it, rather?

15 A. Not that I'm aware of.

16 Q. All right.

17 MR. ADAMSON: A. I would like to add
18 that there is requirements under the Occupational
19 Health and Safety Act regarding roads that it be
20 maintained in a safe condition, it's a workplace,
21 warning of hazards, those sort of things.

22 Q. Whose responsibility is that under
23 that Act?

24 A. Ministry of Labour.

25 Q. On whom is the responsibility

1 imposed?

2 A. The responsibility to comply with the
3 Act is imposed on the employer, the employer of
4 workers.

5 Q. With respect to his own employees?

6 A. That's correct.

7 Q. All right. We're not talking about
8 that, sir. We're talking about Tuer who is a fisherman
9 and he's going to use this road. Does the company have
10 any obligation imposed on it by the Ministry to sign
11 that road saying: Proceed At Your Own Risk?

12 A. No.

13 Q. Now, we come to bridges and you've
14 indicated, Mr. Adamson, that bridges may be built to a
15 certain geometric standard at the request of the
16 Ministry and with some contribution from the Ministry
17 to meet that geometric standard.

18 What about signages on those bridges?
19 First of all, has it been in the past the practice to
20 sign bridges; for example -- well, what kind of signs
21 would you think there would be on such a bridge?

22 A. In the -- going back several years,
23 say five years ago, it was not the practice to sign
24 bridges. When the evaluation and inventory of bridges
25 began about two years ago we recognized the need to put

1 up hazard warning signs on certain bridges that were
2 deficient.

3 And in our northcentral and northwestern
4 region, those bridges are identified as deficient, we
5 approached the forest industry and asked them to post
6 warning signs on those bridges and, in most cases, the
7 industry did so, however if they did not, the Ministry
8 was prepared to put them up.

9 Q. So that was something that was
10 arrived at by agreement or lack of agreement as to who
11 was going to post them?

12 A. Yes.

13 Q. That report, which is Exhibit 686, it
14 is entitled: Final Report, Crown Land Bridge
15 Management, March 1989.

16 A. Yes.

17 Q. Do you have that, sir? And that is
18 just what it is, it's a report of the status of many of
19 the existing bridges with some recommendations; is that
20 so?

21 A. It's not on the status of the
22 bridges, it's guidelines and standards for bridges.

23 Q. Yes. But what I am getting at, it's
24 a report?

25 A. Yes.

1 Q. Which includes an investigation of
2 the existing status or condition of bridges with some
3 recommendations?

4 A. It's not what I would term an
5 investigative report. It's an establishment of some
6 policy, establishment of engineering standards and
7 guidelines for field staff to follow in managing
8 bridges.

9 Q. Okay.

10 A. It doesn't say how many bridges are
11 deficient or which bridges.

12 Q. I understand that. Let me put it
13 this way: It resulted from an investigation of the
14 condition of existing bridges?

15 A. Yes, the investigation was the
16 stimulus behind developing these things.

17 Q. All right. And there are some
18 recommendations in this document including
19 recommendations respecting signage; are there not?

20 A. Yes.

21 Q. And they are just that up to this
22 point; are they not, recommendations?

23 A. They're guidelines, yes.

24 Q. They don't impose any obligation on
25 anybody at the present time?

1 A. That's right, yes.

2 Q. And under this proposal or under
3 these recommendations, is there an assumption of the
4 responsibility on anybody's part to place signs on
5 bridges warning of their condition?

6 A. I think the Ministry expects that the
7 district manager will implement the guidelines, and if
8 there are hazardous bridges, he will take steps to
9 ensure that proper warning signs go up.

10 Q. All right. And also there is in this
11 book, as you say, there are -- in this report, rather,
12 there are what you might call standardized
13 specifications for --

14 A. Yes.

15 Q. --rail crossings and bridges?

16 A. Yes.

17 Q. And that is something that was
18 arrived at in consultation with industry?

19 A. Yes.

20 Q. I think there were two industry
21 members on the--

22 A. That's correct.

23 Q. --team that devised these?

24 A. Yes. They were jointly developed by
25 a committee that included Ministry and industry

1 representatives.

2 Q. All right. Now, when a company which
3 has been using a forest road has no longer any need for
4 that forest road it simply withdraws from that
5 particular area, I gather; is that so?

6 A. Yes.

7 Q. There is no obligation on the company
8 to continue maintaining the road; is there?

9 A. Not beyond the period of time they
10 need it.

11 Q. And you or Mr. Tenaglia, I'm not sure
12 which, in your evidence one of you discussed natural
13 abandonment and physical abandonment of roads. Was
14 that you, Mr. Tenaglia?

15 MR. TENAGLIA: A. Yes.

16 Q. And it's the case, I gather from your
17 evidence, that whether a road is going to continue to
18 be kept open after the company has concluded its use
19 for it is a decision that's made by the MNR?

20 A. That's correct.

21 Q. And if it's going to continue to be
22 maintained at any geometric level that is a decision
23 for the MNR?

24 A. Yes, after the industry has no longer
25 use for that road.

1 Q. And there is no further -- at that
2 stage there is no further interest or obligation of any
3 kind on the company?

4 A. The only obligation would be to take
5 any mitigating measures in the event of potential -- a
6 potential environmental impact of abandoning the road.

7 Q. Well, just a minute now. I suppose
8 you could -- let's take a specific example. I suppose
9 that you might have a bridge which is sound as a dollar
10 when the company has concluded its interest in the
11 road, including the bridge, and yet 20 years later that
12 bridge may fall into the river and cause erosion or
13 sedimentation or something else that's undesirable
14 environmentally.

15 You're not suggesting that the company
16 has any obligation to maintain that bridge; are you?

17 A. No. What I would like to say is it's
18 probably where the requirement -- use management
19 strategy requirement is that that road must be
20 physically abandoned at a certain date when the industry
21 no longer requires it, it would be the industry's
22 responsibility to physically abandon that road in such
23 a way that it's not detrimental to the environment.

24 Q. But that's something --

25 A. That may mean requiring, you know,

1 the pulling of culverts in an appropriate fashion.

2 Q. That's something that's starting to
3 be done now in the five-year plan; is it not?

4 A. Yes, it is.

5 Q. And you call that use management
6 strategies?

7 A. That's where that would be
8 identified, yes.

9 Q. And that's right in the plan?

10 A. Correct.

11 Q. Before the road is even constructed
12 the Ministry and the company and whoever else has any
13 interest in it, and the planning team, decide what's
14 going to happen to this road at the end of its useful
15 life for timbering purposes; is that right?

16 A. Yes.

17 Q. Are timber management plans being
18 developed at this time with those arrangements in them?

19 A. Some of the plans that I've been
20 involved in, yes, they have addressed those particular
21 concerns.

22 Q. That's all very recent, though; is it
23 not?

24 A. Yes, it is.

25 Q. But apart from those -- and, again, I

1 suggest that those are very simple to deal with because
2 it's put on a piece of paper who is responsible for
3 what - but apart from those timber management plans
4 that deal with the subject, am I not correct that once
5 the timber company has concluded its use for the road
6 and withdraws from further use, it has no obligation
7 with respect to the future maintenance of any part of
8 that road?

9 A. That's my understanding, yes.

10 Q. And that would always be the case,
11 subject to any situation where the company has entered
12 into an agreement as to what its obligation is going to
13 be in the future?

14 A. Correct.

15 Q. Now, as I understand it and I don't
16 think that it has been well covered in both your
17 written material and your oral evidence earlier - in
18 your 20-year plan you have an identification of the
19 direction of a road within a one-kilometre corridor;
20 right?

21 A. Yes.

22 Q. And in your five-year plan you have a
23 corridor for primary and secondary roads, and I'm now
24 talking about the administrative classification as
25 opposed to the geometric classification of primary and

1 second roads?

2 A. Yes.

3 Q. And with good planning, how are those
4 corridors identified in the five-year plan; what would
5 normally happen?

6 A. How would you -- your question is:
7 How would you determine the location of those roads?

8 Q. Physically.

9 A. Physially?

10 Q. Yes.

11 A. It's a question of, first of all,
12 looking at the allocations, where the allocations are,
13 identifying alternatives, looking at your supplementary
14 aerial photography or your forest resources inventory
15 photography, finding the most appropriate location that
16 would not impact on areas of concern, if all the areas
17 of concerns were identified at that point in time,
18 determining where gravel deposits are.

19 Those are some of the physical activities
20 we would have to go on in terms of determining
21 location.

22 Q. It's not infallible, I gather?

23 A. No.

24 Q. The reason I say that, apart from
25 what I'm instructed by my own clients, is for example

1 at page 141 of the statement of evidence, about halfway
2 down it is written:

3 "Since the work is done on foot the
4 deviations..."

5 And we're talking about the 500-metre
6 corridor:

7 "...the deviations are relatively minor
8 and usually fall within the corridor
9 approved in the timber management plan."

10 Do you see where I'm reading?

11 A. Yes.

12 Q. So the facts of life are that from
13 time to time when you get into the field you find it's
14 necessary, for perfectly legitimate reasons, whether
15 they be environmental or economic, to deviate from the
16 corridor; is that so?

17 A. Quite often that happens.

18 Q. Is that your experience as well, Mr.
19 Adamson? You have built a lot of roads.

20 MR. ADAMSON: A. Yes, it is.

21 Q. Can I use an example, for example,
22 of -- can I use an example of an identified gravel
23 deposit which you thought was within the corridor and
24 which is going to be used for the construction of your
25 road, and an estimate is made of how many yards of

1 gravel there are in that deposit and, in the course of
2 construction of the road, you find out that in fact
3 there's only 20 per cent of the yard that you thought
4 was there. But you know that there is another deposit
5 further along but not within the corridor which is
6 available.

7 Would that, in your opinion, Mr. Tenaglia
8 or Mr. Adamson, be a justifiable reason for deviation,
9 assuming there are -- let's assume that there are no
10 other values in the area of the deviation?

11 MR. TENAGLIA: A. Yes. That's a good
12 excuse.

13 Q. That would be common -- that would
14 not be uncommon; would it?

15 A. No, I don't think it's uncommon if
16 you run into these kind of physical limitations like
17 that.

18 Q. And with the best of planning you are
19 bound to run into those; are you not?

20 A. Yes.

21 Q. Has that been your experience, Mr.
22 Adamson?

23 MR. ADAMSON: A. That depends on the
24 terrain, but in difficult terrain it's more common to
25 have deviations.

1 THE CHAIRMAN: Is there any notification
2 to anybody about the proposed deviation prior to them
3 being made?

4 MR. TENAGLIA: It depends on the nature
5 of the amendment in the timber management plan. If
6 it's a very minor change in the deviation outside of
7 the corridor, the district manager may determine that
8 it's just an administrative amendment and in so doing
9 then there is no requirement for public notification.

10 If the district manager feels that it's a
11 minor amendment to the timber management plan, then we
12 have to follow the amendment process which requires
13 public consultation.

14 MR. TUER: Q. That will be explored in
15 more detail in Panel 15 because it really comes within
16 the gamut of the discussion on planning, but when you
17 speak of an administrative amendment, you're talking
18 about an amendment that is made on the basis of the
19 professional judgment of the district manager?

20 MR. TENAGLIA: A. Based on consultation
21 from an interdisciplinary team, you know, from
22 professional opinions of the district biologist, the
23 district forester and the parks representative.

24 Q. I understand that, but --

25 A. Yes, it's the district manager that

1 makes that decision.

2 Q. On the basis of the information which
3 he has at hand?

4 A. That's right.

5 Q. Without going through the process of
6 either a minor amendment or a major amendment?

7 A. Yes.

8 Q. And in the kind of example I gave
9 you, if that's an appropriate -- is it in your opinion
10 an appropriate method to deal with this problem of
11 deviation such as we have been discussing, the gravel
12 pit?

13 A. It really depends on the -- you know,
14 if there are absolutely no other values. If the
15 district manager feels that there may be areas of
16 concern as a result of that change of alignment, then
17 he will make his decision accordingly, whether he feels
18 that there should be public consultation or not.

19 Q. All I'm saying is, when the district
20 manager with the advice of his MNR team decides that
21 there are no other values being affected by it, do you
22 agree with me that's an appropriate manner to deal with
23 the deviation outside the corridor?

24 A. If there were no other values
25 identified by that planning team, yes, I would probably

1 agree with you.

2 Q. And that's a matter of professional
3 judgment on the part of the district manager; is it
4 not?

5 A. It is.

6 Q. And he is expected to exercise his
7 judgment; is he not?

8 A. Yes, he is.

9 Q. You bet. And another example where
10 this might arise. Mr. Hogg, in your evidence at page
11 237--

12 MR. HOGG: A. Yes.

13 Q. --under Item 1.1 you have written in
14 the bottom of that first paragraph:

15 "Whether these sites are identified at
16 the planning stage or during
17 construction, adverse effects can be
18 minimized or avoided."

19 Do you see where I'm reading?

20 A. Yes, I do.

21 Q. It might be a snag with a new eagle's
22 nest on it?

23 A. That kind of a feature might be
24 discovered, yes.

25 Q. Sure. And would you agree with me

1 that it would be a legitimate reason to deviate from
2 the corridor -- outside the corridor to avoid that
3 special value?

4 A. Yes, I would.

5 Q. And in fact that would be the
6 responsible way for the company to proceed?

7 A. I believe so, yes.

8 Q. Okay. Now, on the cost effectiveness
9 of road access, Mr. Adamson, I think you said that - if
10 I can find the reference - page 141 -- no.

11 I'm sorry, it's at page 134, Optimization
12 of Factors, you have written:

13 "Where there are no special values or
14 features which act as constraints on road
15 construction, the preferred route is the
16 lowest cost path of least resistance."

17 Do you see that?

18 MR. ADAMSON: A. Yes.

19 Q. Now, that to me seems rather trite
20 and obvious, and it may to you as well, that when
21 you're building a road to be cost effective you want to
22 take the path of least resistance; correct?

23 A. Yes.

24 Q. Now, we have other values or other
25 perceived values when -- or may have other perceived

1 values when determining the route for a road and you
2 have set out here, as required, the alternative routes
3 that are to be identified in getting from point A to
4 point B.

5 Now, would you agree with me, Mr.
6 Adamson, that realistically and practically the
7 economic considerations of how you get from point A to
8 point B are an important consideration to be weighed
9 with the other values, even if those values happen to
10 be in an area of concern?

11 A. Yes. The economics of the project
12 have to be weighed and the cost of mitigating or
13 dealing with the areas of concern, and also the
14 economics of getting the wood as well.

15 Q. In other words, it's not: don't
16 disturb anything at any cost because, as you point out,
17 you find yourself in the position where you simply
18 don't get the wood because it's going to cost too much
19 to get it?

20 A. That has happened in the past, yes.

21 Q. All right. So, therefore, the
22 economic advantage or disadvantage is a serious and
23 legitimate concern in determining the path of that
24 road?

25 A. Yes.

1 Q. Just a couple of other things dealing
2 with -- and today is it not the case that
3 realistically, with certain exceptions I'll come to,
4 road access is by far the most economic way of
5 accessing the forest, whether it be for removal of
6 timber, for regeneration, for tending and that sort of
7 thing?

8 A. Yes, that's what I believe.

9 MR. TUER: There are three
10 interrogatories, Mr. Chairman, and answered questions
11 from the OFIA/OLMA Nos. 1, 2 and 3 which I would like
12 marked, if they can be marked together as the next
13 exhibit.

14 THE CHAIRMAN: Very well. That will be
15 Exhibit 774.

16 MR. TUER: (handed)

17 THE CHAIRMAN: Thank you.

18 ---EXHIBIT NO. 774: OFIA/OLMA Interrogatory Nos. 1, 2
19 and 3 and answers thereto.

20 MR. TUER: Q. Now, Mr. Adamson, the
21 questions and answers to these interrogatories may
22 appear trite and obvious again, but what I want to
23 suggest to you is that in almost all cases there really
24 is no alternative to the building of roads if you're
25 going to have a timber operation?

1 There is no other practical way of doing
2 it. That seems obvious to me, maybe it's not to you.

3 MR. ADAMSON: A. Yes, that's my
4 experience. There may be exceptions, but...

5 Q. I'm going to come to one of those
6 exceptions which also I suppose is probably obvious.
7 You discussed or Mr. Tenaglia discussed, I'm not sure
8 which, alternatives to road transportation and
9 discussed the transportation of wood by water?

10 MR. TENAGLIA: A. Yes, I did.

11 Q. Is that yours, sir? All right. And
12 you pointed out that the use to which rivers and lakes
13 are being used for transport of timber is decreasing
14 every year.

15 May I suggest to you, however, that where
16 water transportation is being used it is being used
17 because there is realistically no practical alternative
18 by way of transportation. Would you agree with that?

19 A. Yes, and I believe I suggested that
20 in the lead.

21 Q. Yes, all right. And most of those
22 water operations have been going on for some time; have
23 they not?

24 A. Yes, they have been.

25 MR. TUER: I have an answered Question 6

1 from the Ministry of Environment, a list of the
2 waterbodies used to transport wood in 1987, and I would
3 like to file that as the next exhibit, Mr. Chairman.

4 THE CHAIRMAN: Exhibit 775.

5 MR. TUER: (handed)

6 THE CHAIRMAN: Thank you.

7 ---EXHIBIT NO. 775: MOE Interrogatory No. 6 and answer
8 thereto.

9 MR. TUER: Q. And similarly with rail
10 traffic use for haulage, that's also the case; is it
11 not, that where rail traffic is used, first of all it
12 is not much of an impact on the environment; and,
13 secondly, it's used because it is economical and
14 essential?

15 MR. TENAGLIA: A. Yes.

16 Q. I am told that in fact rail traffic
17 does fluctuate to some extent because occasionally
18 there are shortage of truckers.

19 Have you had that experience, either of
20 you, that an alternative means has to be found to
21 transport wood because there aren't enough truckers or
22 trucks to carry the demand?

23 A. I haven't had that experience; I
24 couldn't speak to that.

25 Q. Have you, Mr. Adamson?

1 MR. ADAMSON: A. Well, I don't move
2 wood -- I move wood, but it is all treated wood.

3 Q. Okay. Well, we will leave that for
4 somebody else. Now, Mr. Hogg, in your evidence at page
5 242 and 243--

6 MR. HOGG: A. Yes, I have it.

7 Q. --you talked about at page 242 some
8 of the advantages for wildlife from new forest road
9 construction. You have written:

10 "New forest roads are important to
11 hunters and trappers as they often
12 provide access to previously
13 unexploited, or little used, local
14 wildlife populations. From the wildlife
15 manager's perspective more recreation is
16 provided and in the long term
17 exploitation pressure is distributed
18 across a broader area as
19 a road system develops throughout a
20 Forest Management Unit."

21 And I understand from that that you're
22 saying that given the finite number of hunters, for
23 example, you can take the pressure off one area by
24 making other areas available. Have I got that right?

25 A. That's an effect of increasing

1 access, yes, given a limited number of hunters.

2 Q. And you, as a wildlife expert,
3 consider that to be an advantage from the wildlife
4 point of view?

5 A. Yes, we do.

6 Q. Okay. Now, then at the bottom of
7 that page and on to page 243 you have talked about
8 controlling harvest pressure by trappers by means of
9 quotas; right?

10 A. Yes.

11 Q. And I assume from you having said
12 that that you consider that to be an appropriate and an
13 effective way of controlling the harvest of wild
14 animals by trappers?

15 A. Yes, the Ministry does consider it an
16 effective way. Historically that's been the case.

17 Q. Then when we go down the page to
18 other wildlife hazards of hunters, for example game
19 hunters, you seem to take the point of view that
20 controlling the hunter is -- in his or her use of the
21 road, perhaps not an effective way of controlling
22 harvest of wild animals, game animals?

23 A. We certainly don't attempt to manage
24 game or moose on that basis, no. We don't manipulate
25 roads to meet our objectives in terms of moose hunting

1 in the province.

2 Q. I understand that's what you have
3 said, but the fact that you don't, I suggest, doesn't
4 mean that it's not, it means it's out there available
5 to you if you want to utilize it?

6 A. We can -- obviously you can
7 manipulate access to areas and influence the amount of
8 hunting pressure in an area, but at this point, as a
9 matter of I guess policy, we do not utilize the
10 selective harvest system, as we call it, to
11 influence -- excuse me, to determine overall kill of
12 moose within a large area of the wildlife management
13 unit. We don't attempt to manage game at the end of
14 the road, per se.

15 Q. Let me give you an example and this
16 is more -- perhaps more fish than it is land animals.
17 I went to Onaman Lake which is a well known game fish
18 lake in this area, I think; isn't it?

19 MR. TENAGLIA: A. It is.

20 Q. And to get to that lake one drove up
21 a timber road many miles and the further one went the
22 narrower it became and perhaps the more hazardous it
23 became, and when we got to within about a mile and a
24 half from the shore of the lake there was a big sign
25 which said: No vehicles of any kind beyond this point,

1 notwithstanding there was a further very poor road down
2 to the water's edge which meant that you had to walk
3 that distance, and if you didn't rent a boat from an
4 outfitter you had to carry your boat in that distance.

5 Now, is that not a method of controlling
6 the fishing pressure on that lake?

7 MR. HOGG: A. It's an indirect way, I
8 would suggest.

9 Q. Yes, but I assume it has been done
10 because it's effective; is it not?

11 A. Well, I would prefer not to speak to
12 fisheries examples. We have Mr. Ward to perhaps speak
13 to those.

14 Q. Sure. Well, Mr. Ward, what do you
15 say? Is that not an effective way of controlling, to
16 some extent, the pressure on Onaman Lake?

17 MR. WARD: A. It is.

18 Q. And that's just an example that I
19 have personally experienced, but there must be many
20 similar situations; are there not?

21 A. There are.

22 Q. And do you also not control the catch
23 on particular lakes? On some lakes you can catch two
24 lake trout, on other lakes you can catch four lake
25 trout. It is totally localized; is it not?

1 A. We have -- in some cases it's
2 localized, but generally the regulations catch them,
3 it's applied over a wide area.

4 Q. But you use that because it is a
5 method of controlling the harvest of fish?

6 A. That's right.

7 Q. Now, Mr. Hogg, supposing -- are there
8 any situations where -- if I were a moose hunter and
9 not in very good shape, where I might be discouraged
10 from going into a particular area because of the
11 physical problems of getting there? Surely that must
12 happen all the time.

13 MR. HOGG: A. If I understand your
14 example correctly, yes, the harder the terrain, the
15 more arduous it is for people to get into an area, then
16 the fewer people you might expect to be in that area.

17 Q. Isn't that an effective way of
18 controlling wildlife populations, of managing wildlife
19 populations?

20 A. I guess in our opinion it's not a
21 very efficient way and we've chosen to use a more
22 direct approach; that is, the wildlife management unit
23 concept and the issuance of tags that indicate that you
24 can take a bull or a cow in a certain area, and that's
25 the means we choose to limit the amount of pressure on

1 the population.

2 THE CHAIRMAN: Mr. Hogg, is what you are
3 saying essentially that that may, in effect, be an
4 indirect impact of the fact that a road ends at a
5 particular place, or it makes it more difficult for a
6 hunter to get in, but you do not locate the road for
7 those reasons; you locate the road for other reasons
8 such as accessing the harvest and it may turn out that
9 in locating the road in that particular place you are
10 also restricting the hunt, which is a benefit in terms
11 of wildlife management, but not the purpose of where
12 that road is located in the first place?

13 MR. HOGG: I would agree with that, yes.

14 MR. TUER: Q. What I am getting at, Mr.
15 Hogg, is simply this: There are, and I am sure we are
16 going to hear lots more, criticism by various
17 interested groups, environmentalists who are interested
18 in protection of wildlife, outfitters who say that
19 giving access to the forest is bad because it permits
20 hunters and anglers to reach areas that they could not
21 otherwise reach and put pressure on a particular form
22 of wildlife or fishing as a result.

23 All I am suggesting to you,
24 notwithstanding what you say in your package evidence,
25 that regardless of the fact that the road is there,

1 that pressure can be controlled by the Ministry if it
2 wants to in various ways; by quotas, by controlling
3 access on that road, or by making it difficult --
4 physically difficult for the person who wants to hunt
5 or fish to get to the specific area he's trying to get
6 to so only the most ardent, enthusiastic hunter or
7 angler is going to get there. Is that not a fair
8 statement?

9 MR. HOGG: A. Those other methods you
10 mentioned such as road closures are available to use in
11 the way you suggest to inhibit people from getting to a
12 certain area and that will affect the numbers of
13 animals taken, however, that's not the way in which we
14 have chosen to manage game in the province.

15 Q. I understand that clearly from your
16 evidence. I am suggesting to you, however, that it is
17 a viable alternative if you chose to utilize it?

18 A. It is an alternative for us.

19 Q. Thank you. One other I want to speak
20 about briefly, that's Exhibit 695. Who was it that
21 introduced that exhibit; was it you, Mr. Tenaglia?

22 MR. TENAGLIA: A. Yes, it was. That's
23 the application for work permit?

24 Q. Yes. Now, I understand that this
25 document was to come into effect on the 1st of April --

1 or the 30th of April, 1989?

2 A. It was supposed to, but we had some
3 problems with implementing it or getting it through the
4 system by then. I think it was pretty well out to the
5 field by early June.

6 Q. So there has not, up to today, the
7 28th of August, been much opportunity to review,
8 refine, fine-tune this document; am I correct?

9 A. No, not at this stage. But I believe
10 I did indicate that there was a commitment by the
11 Ministry to undergo a fairly thorough review of this
12 document this fall and have all the other interested
13 parties like the OFIA, NOTOA get involved in the review
14 of the document.

15 Q. All right. So by that time you will
16 have had a trial run and you will have available some
17 experience as to how it's working, in what ways it's
18 working, what way it's not working, which ways it
19 should be revised, and so forth?

20 A. Yes, we will have some fairly good
21 experience by then.

22 Q. Sorry.

23 A. Yes, we will have some good
24 experience.

25 Q. And including those other interests,

1 I assume will be involved the OFIA and OLMA
2 representatives?

3 A. Yes, they will be.

4 Q. And they will be involved in a
5 meaningful way; will they?

6 A. Yes, they will be.

7 Q. Yes. So there is really not much to
8 report on this at the present time until after that
9 review takes place or until after that review takes
10 place?

11 A. No, I don't think there is anything
12 else to say.

13 Q. Then, Mr. Pyzer, with respect to your
14 work in this document, I think you've already said this
15 in your oral evidence, and you certainly have
16 underlined it in the document itself at page 348 in
17 paragraph 2.2, you have written:

18 "In reviewing the tables it should be
19 understood that the majority of
20 potential negative social economic
21 effects are soon to occur in the absence
22 of appropriate environmental management."
23 That's your opinion?

24 MR. PYZER: A. That's correct.

25 Q. And the two words that I underline

1 again in that statement are the words potential and
2 absence.

3 A. Yes.

4 Q. Correct?

5 A. Yes.

6 Q. Now, conceding that you can't build a
7 road without impacts of some sort or other, are you
8 intending by these tables to demonstrate that following
9 the good practices outlined that the impacts can be --
10 impact of road building can be eliminated or mitigated
11 to acceptable standards?

12 A. In the vast majority of cases I would
13 agree with that, yes.

14 Q. And all of these things that we've
15 heard about in these documents such as the
16 Environmental Guideline for Access Roads and Water
17 Closings are directed towards eliminating or
18 alleviating, mitigating any adverse impact?

19 A. That's right.

20 Q. Thank you.

21 MR. TUER: Thank you, Mr. Chairman.

22 THE CHAIRMAN: Are you completed with
23 your examination?

24 MR. TUER: I am, sir.

25 THE CHAIRMAN: Thank you.

1 Ladies and gentlemen, in view of the fact
2 that the industry's cross-examination took less time
3 than was anticipated, Mr. Edwards was not due here
4 until 4:00 p.m.

5 I think we will adjourn for 15 minutes at
6 this point to ascertain whether or not he can be here
7 earlier and, if so, then we can start perhaps at 3:00
8 or sometime at that point, and we will be back very
9 shortly, in 15 minutes, to let you know. We will have
10 Mr. Mander make some inquiries.

11 If in fact he can't be back, then I don't
12 see much alternative other than to wait until four
13 o'clock. It wouldn't make much sense to have another
14 party commence and Mr. Edwards is due to be on for the
15 next two to three days.

16 MR. TUER: I could have gone on for
17 another couple of hours, sir.

18 THE CHAIRMAN: No, no, we are not
19 suggesting, Mr. Tuer, that you fill in the time if you
20 are in fact complete.

21 MS. BLASTORAH: Mr. Chairman, I know that
22 Nishnawbe-Aski Nation had indicated they would only be
23 two or three hours, but I assume that Ms. Kleer is not
24 here since I don't see her in the room.

25 THE CHAIRMAN: Well, I think that's a

1 problem. I am not sure that they are going to be up
2 this week in view of the fact that I don't think they
3 were expected to be reached this week given the fact
4 that Mr. Edwards was going to be for two to three days
5 in its entirety.

6 I don't think we want to commence with
7 the Ministry of the Environment's presentation until
8 after the other parties have completed.

9 MS. BLASTORAH: I anticipate Ms. Seaborn
10 would have something to say about that, in any event.

11 THE CHAIRMAN: Well, I think the Board
12 would as well. So I think we will adjourn now for 15
13 minutes and we will come back and notify you whether we
14 will adjourn until four.

15 MR. TUER: Mr. Chairman, before you go, I
16 just noticed I do have some -- I have three other
17 interrogatories that I could file when you come back,
18 if you like.

19 THE CHAIRMAN: Well, why don't we just
20 file them right now just before we go.

21 MR. TUER: They are OFIA Question No. 5,
22 NOTOA Question No. 27 and NOTOA Question 25. I am
23 sorry I overlooked doing that earlier.

24 THE CHAIRMAN: That last one was 25?

25 MR. TUER: 25 and 27.

1 THE CHAIRMAN: Thank you.

2 MR. TUER: (handed)

3 THE CHAIRMAN: That will be Exhibit 776.

4 ---EXHIBIT NO. 776: OFIA Interrogatory Question No. 5,
5 NOTOA Question No. 25 and 27 and
answers thereto.

6 THE CHAIRMAN: Ms. Seaborn?

7 MS. SEABORN: Thank you, Mr. Chairman.

8 Perhaps I could take this opportunity to raise one
9 procedural matter given that we were discussing the
10 order of cross-examination with respect to this panel.

11 You will recall that on Thursday, August
12 17th Mr. Hanna raised an issue about his client, the
13 Ontario Federation of Anglers & Hunters being treated
14 as a party not represented by counsel for the purposes
15 of the hearing.

16 I just wanted to bring to the Board's
17 attention a provision in the Board's own Rules of
18 Practice and it would be our submission that
19 irrespective of the Board taking a decision on Mr.
20 Hanna's request, that the Minister of the Environment
21 would, in the normal course, still go last.

22 THE CHAIRMAN: Well, I think it's unfair
23 to determine that in the absence of Mr. Hanna, but the
24 Board is well aware of the provisions in its rules
25 which allows for a deviation from the order that is set

1 out in the rule you are referring to and, unless we
2 hear something from Mr. Hanna to the contrary that
3 persuades us otherwise, it would be the Board's
4 intention to have the Ministry go after all other
5 parties.

6 MS. SEABORN: And having said that, Mr.
7 Chairman, as we have done throughout the hearing, if
8 there comes a moment in the hearing where our
9 cross-examination could be fit in so that there is no
10 downtime, we are quite prepared to go out of order for
11 that purpose.

12 THE CHAIRMAN: With that proviso, we will
13 certainly adjust the order if it's necessary to
14 accommodate the expediency of the hearing as well.

15 MS. SEABORN: Thank you, Mr. Chairman.

16 THE CHAIRMAN: Thank you. We will return
17 in 15 minutes.

18 ---Recess taken at 2:25 p.m.

19 ---On resuming at 3:00 p.m.

20 THE CHAIRMAN: Thank you. Be seated,
21 please.

22 Mr. Edwards, prior to you coming this
23 afternoon the Board indicated to the parties that we
24 would like to sit through, with the exception of
25 perhaps a break and maybe a half hour break around the

1 supper hour, to seven o'clock and then go into the
2 scoping session which may last a half hour to an hour
3 and then break for the day, recommencing tomorrow
4 morning at 8:30, through most of the day to around 6:00
5 and commencing on Wednesday at eight o'clock in the
6 morning and sitting no longer later than three, at
7 which time the Board will be rising for the week. We
8 are unable to sit on Thursday.

9 MR. EDWARDS: I understand that, Mr.
10 Chairman. I have just let Mr. Freidin know that my
11 review of things indicates that I will be finished
12 quite comfortably by Wednesday.

13 THE CHAIRMAN: Good.

14 MR. EDWARDS: What I had thought was -- I
15 have a rather natural place to break my
16 cross-examination today and I will indicate to the
17 Board where I think that's appropriate and, at that
18 stage, assuming we are somewhere near the supper hour,
19 with the Board's permission --

20 THE CHAIRMAN: Okay. Well, that would be
21 fine. If you are going to finish by Wednesday, and we
22 will still have to come back at 7:00 though for the
23 scoping session because that was previously announced.

24 MR. EDWARDS: Yes. Well, I don't have
25 any trouble with finishing by Wednesday. I thank the

1 Board for the scheduling accommodation it has given me
2 this week. I had a problem this afternoon and I have
3 another one to attend to on Thursday.

4 Thank you.

5 THE CHAIRMAN: Very well.

6 MR. EDWARDS: Thank you for that
7 technical assistance.

8 Mr. Chairman, I can indicate that I will
9 be referring to the Resource Access Roads Policy and
10 Implementation Strategies and Guidelines which I
11 understand you already have. It is Exhibit 685.

12 I will be referring to an interrogatory
13 which has not yet been filed, it's No. 25 of our
14 interrogatories and I have copies of that.

15 THE CHAIRMAN: That has just been filed
16 by Mr. Tuer, Exhibit 776.

17 MR. EDWARDS: Oh, I see. Thank you.

18 One particular page of Exhibit 685 is all
19 I intend to refer to, so if you care to have me do it,
20 I will file the particular page at the appropriate
21 time.

22 THE CHAIRMAN: Is it this page?
23 (indicating)

24 MR. EDWARDS: It doesn't look like it.

25 THE CHAIRMAN: Okay.

1 MR. EDWARDS: It's strategy LM-90206. I
2 can provide you with copies of that right now.

3 THE CHAIRMAN: All right. That's a
4 different one than what we have.

5 MR. EDWARDS: (handed)

6 THE CHAIRMAN: Thank you.

7 Ms. Blastorah, just to get our exhibits
8 straight, we had a page which was a policy LM-90503
9 marked as Exhibit 685.

10 MS. BLASTORAH: 685A, Mr. Chairman.

11 THE CHAIRMAN: And now you have given us
12 Exhibit 685 which is the Resource Access Policy as the
13 complete exhibit; is that correct?

14 MS. BLASTORAH: That's right. We had
15 filed one copy of the complete exhibit, the entire
16 binder, but that was the reading room copy. It was all
17 we had available at the time and because we were using
18 the particular policy during the evidence-in-chief I
19 filed the single page as 685A. That is included in the
20 complete binders that you now have.

21 THE CHAIRMAN: Okay. And, Mr. Edwards,
22 do you want a separate exhibit number for this one
23 policy you are going to be referring to?

24 MR. EDWARDS: I'm sorry, Mr. Chairman?

25 THE CHAIRMAN: Do you want a separate

1 exhibit number for this one policy that you are going
2 to be referring to because it is included in 685?

3 MR. EDWARDS: I don't think it's
4 necessary. I just got copies of it for ease of
5 reference, subject to the Board's direction.

6 THE CHAIRMAN: I think probably it's
7 easier if we give it a separate number and relate it to
8 your evidence specifically.

9 MR. EDWARDS: Fine.

10 THE CHAIRMAN: Okay. That will be
11 Exhibit 777.

12 ---EXHIBIT NO. 777: One page entitled: Strategy
13 LM-90206 taken from NOTOA
Interrogatory No. 25.

14 MR. EDWARDS: And, Mr. Chairman, I also
15 intend to refer to Exhibit 686 which is the Crown Land
16 Bridge Management Final Report of March, 1989. I
17 understand the Board has that as well.

18 THE CHAIRMAN: Yes, we do.

19 MR. EDWARDS: My first line of
20 questioning will relate to some of the material that's
21 in the statement of evidence for Panel 14, particularly
22 Mr. Adamson's evidence at pages 111 and 112.

23 CROSS-EXAMINATION BY MR. EDWARDS:

24 Q. Mr. Adamson, do you have your pages
25 111 and 112 in the witness statement?

1 MR. ADAMSON: A. Yes.

2 Q. I see at that -- or in that area you
3 deal with the issue of the cost of construction and you
4 indicate at the third paragraph under Item 1.4 that:

5 "It is estimated about 90 per cent of the
6 roads used for timber management are
7 constructed by the companies."

8 A. Yes, that's an estimate.

9 Q. And then you go on to discuss the
10 construction of roads by the MNR and the funding by the
11 province for a variety of sources.

12 And at page 112, if I can refer you to
13 your second paragraph there:

14 "Roads constructed by the timber
15 companies are paid for by them."

16 A. That's right.

17 Q. Would those be the 90 per cent of the
18 roads that you were referring to on page 111?

19 A. Yes.

20 Q. You indicate further that:

21 "Many of the roads are eligible for cost
22 sharing with the Crown..."

23 And you may be aware that this issue has
24 been raised previously in these hearings as to the
25 amount of contribution or payment by the companies.

1 Are you aware that that's been raised in a general
2 fashion previously?

3 A. No.

4 Q. To your knowledge, since that issue
5 has been raised or at any time has a study been
6 undertaken as to the amount of funds expended by the
7 industry on roads constructed for timber management
8 purposes?

9 A. I'm not aware of any such study.

10 Q. Is any member of the panel aware --

11 MR. FREIDIN: Mr. Chairman, the evidence
12 is quite clear that the Ministry is not aware of the
13 cost of road building which is paid for by the company.
14 I think that position was clearly put in earlier
15 evidence.

16 MR. EDWARDS: Q. Has anybody taken any
17 steps since that was earlier put in evidence to find
18 out what that information is? Does anybody on the
19 panel have any information with respect to that?

20 (no response)

21 So the present state of the knowledge
22 today is still that the Ministry does not know how much
23 is expended by the industry on road construction?

24 MR. ADAMSON: A. That's correct.

25 Q. Has industry been approached about

1 its position with respect to the revealing of this
2 information to the knowledge of yourself, Mr. Adamson?

3 A. Not not to my knowledge, no.

4 Q. Would any other member of the panel
5 have any information or instruction on that point?

6 (no response)

7 Mr. Adamson, you're involved regularly in
8 dealing with the industry on the road construction
9 matters; are you?

10 A. In an indirect way. The industry
11 normally deals with our districts and if a district
12 requires engineering help or special assistance or
13 advice they will come and ask for it, and we get
14 involved at that time. But the direct dealing is
15 through the districts.

16 Q. Once these roads are constructed the
17 use of the road is controlled by what's called a use
18 management strategy?

19 A. Yes.

20 Q. And it is the present position that
21 without words to the contrary by the MNR the public at
22 large has the right to use all of those roads?

23 A. Yes. Generally all roads are open to
24 public use unless otherwise restricted by the use
25 management strategy.

1 Q. And are you familiar with the
2 argument that that position is quite justifiable in
3 light of the fact that the public that pays for the
4 road should be entitled to use it? Have you heard that
5 type of argument made?

6 A. Yes.

7 Q. To your knowledge, sir, have any
8 studies been done of the use of the roads to indicate
9 the number of non-timber management users of any
10 particular roads, traffic volume study I guess perhaps
11 would be the --

12 A. That's a good question, that way to
13 put it. I'm not aware of any in the past, but we have
14 started one this summer on a particular road to gather
15 information on other users.

16 Q. Which road is that, sir?

17 A. It is the road connecting Sapawe to
18 Upsala.

19 Q. Does it have any other name other
20 than the Sapawe/Upsala Road?

21 A. It is also called by Fire Steel Road
22 at the Highway 17 end.

23 Q. Thank you.

24 A. And there is a project contemplated
25 to upgrade the road and in order to assess the benefits

1 and use, there's traffic studies going on.

2 Q. Would any other panel members be
3 aware of any other studies that have been undertaken or
4 are underway at present with respect to the use of
5 forest access roads?

6 (no response)

7 Mr. Ward...?

8 MR. FREIDIN: Perhaps the record should
9 indicate somehow that there is no such activity or
10 study.

11 MR. EDWARDS: Certainly the panel members
12 indicated that they knew of none.

13 MR. FREIDIN: There is nothing on the
14 record, there is silence, and perhaps you should make
15 sure you get a yes or a no in the answer on the
16 transcript.

17 MR. EDWARDS: For the purposes of the
18 record, I think we could agree that the panel members
19 did not indicate that they had any further knowledge
20 beyond what was already adduced.

21 Q. Would angling pressure be surveyed in
22 any fashion?

23 MR. WARD: A. Yes, it is.

24 Q. How are those surveys undertaken?

25 A. Well, there are sort of two main

1 methods that we use. One is aerial surveys, counting
2 anglers and boats from the air, and we also have what
3 we call a roving creel survey which is basically on the
4 water, interviewing of anglers, counting boats and
5 determining the amount of fish that anglers have caught
6 and kept.

7 Q. Are those latter statistics kept in
8 in any fashion?

9 A. Yes, they are. Most creel surveys
10 have some kind of report written regarding the amount
11 of harvest that comes out of a particular waterbody.

12 Q. Mr. Ward, would angling pressure have
13 any relationship, in your view, to use of the roads?

14 A. Certainly.

15 Q. And would -- I understand that the
16 statistics that are kept with respect to the contacts
17 with anglers are divided on the basis of resident and
18 non-resident?

19 A. Conservation officers, in terms of --
20 for enforcement statistics calculate that kind of
21 information. We would also -- most of our creel
22 surveys interview anglers and ask for their residence,
23 whether they are American or Manitoban or from Ontario
24 or whatever, and some creel surveys break it down into
25 those type of categories.

1 Q. All right. For the purposes of the
2 survey, a resident is defined as what?

3 A. Basically a resident of Ontario.
4 Now, some creel surveys have locals versus residents.
5 In other words, if you had a creel survey around Sioux
6 Lookout District, for example in Lac Seul, you might
7 call local residents from there, from the Sioux Lookout
8 area, ones from outside that area may be called just
9 residents of Ontario depending on the purposes of the
10 creel.

11 Q. So the contacts which might be had
12 with residents would be with residents of Ontario?

13 A. Yes. Generally that's correct, yes.

14 Q. Non-residents would be any other
15 Canadian and non-Canadian?

16 A. Well, normally we talk about
17 non-residents of Ontario and non-residents of Canada,
18 basically.

19 Q. For the purpose of the conservation
20 officer's enforcement reports, when you use the term
21 non-resident, does that refer to non-residents of
22 Canada?

23 A. Yes, generally I believe that's
24 correct.

25 Q. Would the number of contacts be

1 indicative of where the fishing pressure would be
2 coming from in a particular area?

3 A. Yes. You mean if you had 80 or 90
4 per cent of your anglers were non-residents, you knew
5 that most of your anglers and fishing pressure came
6 from non-residents, that's the question?

7 Q. Yes, that's my question.

8 A. That's right.

9 Q. Thank you. Sir, in response to our
10 Interrogatory No. 25 there was a chart produced along
11 with a brief answer, and I understand Mr. Tuer has just
12 filed this previously. Do you have a copy of that,
13 sir?

14 A. Yes, I do.

15 MR. EDWARDS: Do you have a copy of it,
16 Mr. Chairman?

17 THE CHAIRMAN: Yes, we do.

18 MR. EDWARDS: Q. Sir, just briefly for
19 the record I will read in. The question is:

20 "It is stated that the normal means of
21 controlling the harvest of fish is
22 through the enforcement of the Fisheries
23 Act. Please provide studies to
24 illustrate the enforcement of this Act."

25 The answer:

1 "We have not conducted studies
2 specifically on the enforcement of the
3 Fisheries Act. Some regions do have
4 enforcement reports that indicate the
5 number of anglers, commercial and bait
6 fishermen contacted, warned or charged by
7 conservation officers under the Fisheries
8 Act. For example, the attached table
9 presents this information for the
10 northwest region for the period January
11 to December, 1987."

12 Can I just direct your attention to the
13 second page of that, sir. One can see that there is
14 statistics for Dryden, Fort Frances, Ignace, Kenora,
15 Red Lake and Sioux Lookout down the left-hand side and
16 it has the total number of contacts with resident
17 anglers at 10,332?

18 MR. WARD: A. That's correct.

19 Q. And it has the total number of
20 contacts with non-resident anglers at 20,572?

21 A. That's right.

22 Q. So would that indicate to you, sir,
23 that the fishing pressure would appear to be coming on
24 perhaps a two to one basis from non-residents?

25 A. From these statistics, that's what it

1 would indicate, yes.

2 Q. Yes. So in the northwest region, at
3 least, it would be fair to say that the fishing
4 pressure would be significantly impacted by
5 non-residents?

6 A. Yes, that would be true.

7 Q. Would you know, sir, if it's on the
8 order of two to one over a pattern of years or was this
9 particular example out of the ordinary?

10 A. Well generally, just in terms of some
11 of the creels that we've conducted, roving creels on
12 waterbodies, normally we would find non-resident
13 anglers, and I'm not sure whether we would include
14 Manitobans there, but it is more like 80 to 90 per cent
15 of our angling effort in the northwest region is mainly
16 non-resident, just in terms of the population base that
17 we have of number of residents in northwestern Ontario.

18 Q. I see. And the northwest region,
19 that would include all of the districts that are listed
20 on the left-hand side of this interrogatory?

21 A. That's correct, yes.

22 Q. Do you know the statistics for other
23 regions or districts? I have not been provided with
24 them and I am asking if you know them.

25 A. No, I'm not -- I don't have them

1 either.

2 Q. Is any part of the rationale of
3 construction of forest management roads the service of
4 the interests or the recreational needs of
5 non-residents?

6 And, Mr. Ward, you may not be the person
7 who is most qualified to that answer that, but I will
8 invite Mr. Tenaglia perhaps to respond to that if he
9 could.

10 MR. TENAGLIA: A. Could you repeat the
11 question, Mr. Edwards?

12 Q. Is any part of the rationale for the
13 construction of forest management roads the service of
14 the recreational needs of non-residents?

15 A. If I understand your question, you
16 would like to know if the construction of forest access
17 roads take into consideration the use of non-residents
18 primarily or may be one of the factors?

19 Q. That's a fair way of putting the
20 question, yes. Are the roads constructed to serve the
21 recreational needs of non-residents?

22 A. They may -- in some cases, yes. Not
23 necessarily non-residents, but residents of Ontario or
24 Canada or non-residents.

25 Q. So one of the rationales for the

1 construction of forest access roads is to serve the
2 recreational needs of non-residents of Canada?

3 A. Subject -- again, it's subject to the
4 kind of input that we receive, and if we receive a lot
5 of input, whether it's from people of Ontario or people
6 of Canada or people from the United States, that would
7 be taken into consideration.

8 THE CHAIRMAN: But doesn't there have to
9 be, Mr. Tenaglia, a forestry reason to construct the
10 road in the first place--

11 MR. TENAGLIA: That is the prime --

12 THE CHAIRMAN: --i.e., a timber harvest
13 reason or a maintenance or reforestation reason?

14 MR. TENAGLIA: Definitely, that would be
15 the primary reason. But, again, we may take into
16 consideration the input that we receive from the public
17 as to possibly the alternative that's being selected,
18 and I don't think we discriminate as to the origin of
19 the input that we receive.

20 MR. EDWARDS: If I might just have a
21 moment, please, Mr. Chairman.

22 Q. Mr. Tenaglia, if I can direct your
23 attention, sir, to the witness statement of Panel 14,
24 paragraph 2. That's at page 32 of the witness
25 statement. Do you have that, sir?

1 MR. TENAGLIA: A. Yes.

2 Q. The reasons for providing -- I will
3 read from that, sir:

4 "The reasons for providing access in the
5 timber management undertaking are
6 primarily:

7 (a) to transport personnel and equipment
8 required to collect resource information,
9 harvest the forest resources and to
10 implement forest renewal, maintenance and
11 monitoring activities; and,

12 (b) to transport wood from the forest
13 to wood processing facilities."

14 And you are cited as authority for that
15 proposition. Do you recall--

16 A. Yes.

17 Q. You recall that; do you?

18 A. And I think that's what the Chairman
19 just indicated, that is the primary use for -- primary
20 reason for establishing a road for timber management
21 purposes, and that I think what you were getting to is
22 that in the selection of some alternatives, public
23 input will determine which -- public input will help
24 determine which route is selected.

25 Q. And which public are you speaking of,

1 sir?

2 A. And I'm saying that we don't really
3 discriminate as to the kind or the origin of the input,
4 whether it's resident or non-resident.

5 Q. I see. Sir, our first interrogatory,
6 Question 1 - and I'm not certain if that has been filed
7 as an exhibit, I didn't think I would have reference to
8 it, and I don't have copies made because I didn't think
9 I would have to refer to it - if I might just read it
10 slowly for the record.

11 Question No. 1 relates to this exact
12 paragraph, page 32, paragraph 2, the one that we have
13 just been referring to. And it says as follows:

14 "If these are primary reasons for
15 providing access, what are secondary,
16 tertiary..." et cetera.

17 And the response which is given, answer:

18 "On page 32, paragraph 2 we have listed
19 the reasons for providing access. The
20 access activity allows the other
21 activities of the undertaking to proceed.
22 Based on your question, perhaps the
23 paragraph's message would be clearer if
24 the word 'primarily' was deleted."

25 Now, are you taking the position of

1 paragraph 2 or would you adopt the position of the
2 response to the interrogatory?

3 A. I think they are one in the same.
4 Again, the primary purpose is for timber management --
5 for timber management.

6 Q. Well, sir, the question -- the
7 interrogatory was very clearly worded to find out what
8 other reasons might exist. So we get a response back
9 which says delete the word primarily. So the reasons
10 for providing access in the timber management
11 undertaking are (a) and (b).

12 Now, which set of reasons should we
13 adopt?

14 MR. FREIDIN: Well, there is no
15 difference for God's sakes.

16 MR. TENAGLIA: The other reasons may help
17 in determining the most suitable alternative.

18 THE CHAIRMAN: Well, just to get it
19 straight. Is what you are saying essentially: The
20 reasons for constructing a road in the first place, a
21 timber road, a forest road, is timber management
22 purposes either harvesting, regeneration, et cetera?

23 When it comes to where you locate that
24 road, having made that decision, you take into account
25 other factors and you may locate the road in a

1 particular spot to take into account other uses such as
2 recreational uses. Is that basically what you are
3 saying?

4 MR. TENAGLIA: That's correct.

5 MR. EDWARDS: Mr. Chairman, I hadn't
6 planned to file Question 1, but since I've referred to
7 it on the record I'll have copies made and perhaps we
8 could have that entered as an exhibit.

9 THE CHAIRMAN: Very well. Should we
10 reserve a number for it at this time?

11 MR. EDWARDS: Please.

12 THE CHAIRMAN: Exhibit 778.

13 ---EXHIBIT NO. 778: NOTOA Interrogatory No. 1 and
14 (reserved) answer thereto.

15 MR. EDWARDS: Q. So if there are more
16 reasons for providing access in the timber management
17 undertaking beyond the primary ones of (a) and (b),
18 what, sir, are those other reasons?

19 MR. TENAGLIA: A. Some of the other
20 benefits associated with access, as you're suggesting,
21 is for recreational purposes, for wildlife management,
22 for forest protection.

23 There is a host of other users out there
24 that will benefit from those access roads; other
25 stakeholders. There is certainly members of NOTOA,

1 there is bear baiting associations, there is mining
2 associations.

3 Q. Is one of the reasons serving
4 recreational needs of Americans?

5 A. Americans will certainly benefit from
6 that access, yes.

7 Q. When developing a use management
8 strategy for a road, Mr. Tenaglia, does the -- how does
9 the MNR take into account use by non-residents?

10 A. I think Mr. Pyzer would like to speak
11 to that.

12 Q. Mr. Pyzer, do you feel qualified to
13 answer that, sir?

14 MR. PYZER: A. I think from the American
15 perspective, how we've looked at that, as guests of the
16 tourist industry and a tourist operator whose
17 clientele is American, his input would be reflecting
18 his guests and obviously his business.

19 In terms of control of non-residents,
20 that's why we have the Crown Land Camping Program which
21 in fact excludes non-residents from camping in areas
22 and excludes --

23 Q. Is it fair to say, sir, that you
24 assess the desires of the non-resident tourist through
25 the tourist operators?

1 A. That's the only way. We don't go to
2 the United States and ask them what they want.

3 Q. All right. But you would consider
4 that an adequate statement on behalf of the interests
5 of tourists; would you, to deal just with the
6 operators?

7 A. Well, tourist operators, people like
8 bait and tackle stores that service that clientele.
9 You probably know that when we discussed that whole
10 Crown Land Program with NOTOA that there was a large
11 body there that were not tourist operators that were
12 tremendously interested in that non-resident angler and
13 hunter and, in fact, did not want us closing down roads
14 as NOTOA had suggested for that very reason.

15 And so together we delicately walk that
16 line and, at the one hand, protecting the established
17 tourist industry, but at the same time opening up other
18 roads and maintaining open roads to the benefit of the
19 local Canadian Tire Store, the local bait shop and
20 tackle shop and the Holiday Inns and the Ramada Inns
21 where those people may have stopped on their way
22 through, but weren't the tourist industry in terms of
23 NOTOA's perspective.

24 Q. Would you agree that the tourist
25 operator gives you some useful information in assessing

1 the desires of tourists--

2 A. Absolutely.

3 Q. --both resident and non-resident?

4 A. Absolutely.

5 Q. And that's a reliable source of
6 information for you?

7 A. Is one very good reliable source,
8 yes.

9 Q. Thank you. I've asked some questions
10 about the frequency of fish violations. Just referring
11 to that chart that Mr. Ward briefly looked at, are
12 statistics kept on the frequency of charges laid under
13 the Public Lands Act? Would any member of the panel be
14 qualified to answer that?

15 A. I don't know.

16 MR. TENAGLIA: A. I'm not aware of any.

17 MR. FREIDIN: It might be an appropriate
18 question for Panel 16 which deals with monitoring, Mr.
19 Chairman.

20 MR. EDWARDS: I realize this may trench
21 upon the area of monitoring, but I feel compelled to
22 ask the question of how one can monitor the
23 effectiveness of road closures looking at an option as
24 between gates and signs.

25 Q. Mr. Tenaglia, I understand you are

1 somewhat familiar with that issue, the use of gates and
2 the use of signs to close roads. Do you, sir, know of
3 any way of monitoring the effectiveness of a road
4 closure?

5 MR. FREIDIN: Is the question as to
6 whether he knows how to monitor the effects of road
7 closures or whether he can tell the difference between
8 gating and signing?

9 MR. EDWARDS: Well, that was -- the
10 question was a comparative one; that is to say, the
11 relative effectiveness of gates versus signs as methods
12 of enforcing or effecting road closure that works.

13 Q. And are you, sir, aware of any way of
14 monitoring that effectiveness?

15 MR. TENAGLIA: A. Well, in Wawa District
16 we are certainly soliciting input from all of the
17 shareholders out there looking for feedback as to any
18 violations of signs that may have been erected or
19 gates. That's one means of monitoring the
20 effectiveness.

21 We have certainly a lot of field
22 technicians, conservation officers in the field that
23 are monitoring whether the signs and gates are indeed
24 being honoured.

25 Q. Sir, would that be another

1 circumstance where you would rely on information
2 provided to you by local tourist operators?

3 A. Yes.

4 Q. And would you regard that as a
5 reliable source of information?

6 A. Yes.

7 MR. PYZER: A. Mr. Edwards, just to add
8 one point there, because you may be confusing the
9 enforcement, that fish and wildlife enforcement.

10 Part of every -- every conservation
11 officer has an enforcement plan and, certainly in terms
12 of Kenora District, part of their enforcement plan is
13 on a regular basis with feedback to the appropriate
14 supervisor, is to do that monitoring of the roads, how
15 many people they saw on the road, and it's not
16 necessarily -- you couldn't look at it at number of
17 charges laid and whatnot.

18 So the only point I wanted to make is
19 that there is an enforcement plan in the district that
20 each conservation officer has. Above and beyond that
21 warnings convictions, they have duties that are
22 enforcement related, but it's also monitoring related
23 in terms of how frequently they see people in certain
24 areas doing certain things.

25 Q. Well, do they keep a list of

1 contacts?

2 A. But it may not be recorded as a fish
3 and wildlife, it may be in fact recorded as the Mabrin
4 Road ten times they checked it this summer and how many
5 people they saw. If they saw none, there would be no
6 contacts.

7 But in fact they are monitoring the
8 Mabrin Road to find if in fact there are people down
9 that road who should not be down it because it's a
10 closed road. But the point I'm making is there may be
11 zero contacts, but they may be on it 30 times.

12 Q. You are the district manager in
13 Kenora at present, sir?

14 A. That's correct.

15 Q. Have there been charges under the
16 Public Lands Act in your district within the past year?

17 A. Supreme Court of Canada, yes.

18 Q. How many charges have been laid in
19 the Kenora District; do you know?

20 A. No, I don't. I do know there have
21 been charges. I couldn't tell you how many there have
22 been or when they were, but...

23 Q. You indicated that something under
24 the Public Lands Act is going to the Supreme Court of
25 Canada?

1 A. No, we had a Supreme Court ruling on
2 closed road -- road closure which an individual didn't
3 like being closed and it was eventually appealed to the
4 Supreme Court and we were successful in that. That was
5 the Werner Lake Road.

6 Q. The Border Lake...?

7 A. Werner, W-e-r-n-e-r, coming across
8 from Manitoba.

9 Q. Yes.

10 A. Mr. Heinrick. And there have been
11 charges -- I can tell you there have been charges on
12 the Mabrin Road and, in fact, I believe it was the
13 tourist operator we charged.

14 Q. And this is in fact under the Public
15 Lands Act?

16 A. I'd have to check. I know it was a
17 fish violation for one and I don't believe if we laid a
18 second charge for being on the road which was signed to
19 not be on that road. I'd have to check the specifics.
20 But the person was definitely charged and there have
21 been more than that, there have certainly been others.

22 Q. Would those -- I asked you earlier,
23 sir, if there was statistics kept on the frequency of
24 charges under the Public Lands Act and you were unaware
25 of any.

1 Would they -- even at a district level,
2 would there be -- would you in your district office
3 keep that type of statistic?

4 A. Well, I hesitate to say yes, but I
5 suspect that the answer is yes. I'd have to talk to my
6 land supervisor about that, and certainly if I asked
7 him I'm sure he would have an answer. But I hesitate
8 because I don't know a hundred per cent for certain.
9 In fact the answer may well be: Yes, they are kept on
10 a provincial basis as well aggregated from the
11 districts but, again, I don't know that to be a fact.

12 Q. Perhaps we'll raise that again on the
13 monitoring. Just before I leave that though, Mr.
14 Tenaglia, are you familiar whether that takes place in
15 the Wawa District since you are there at present?

16 MR. TENAGLIA: A. I think that
17 information is available in terms of determining the
18 number of charges under the Public Lands Act, yes.

19 Q. Do you know if it's kept on a
20 district basis?

21 A. I can't say for sure who is
22 maintaining that, but I know that it is available.
23 Just recently we looked at the number of charges on one
24 particular road and the information was readily
25 available.

1 Q. Were there in fact charges in 19 --
2 this past year in the Wawa District under the Public
3 Lands Act?

4 A. I can't say for sure.

5 Q. Have there been any studies
6 undertaken in an effort to determine the relative
7 effectiveness of gating a road versus signing a road in
8 terms of controlling the use of that road, to the
9 knowledge of any member of the panel?

10 MR. PYZER: A. I wouldn't want to call
11 it a study, but I can say in Kenora District we have
12 taken the closed road approach, the signing approach
13 and we've monitored that very carefully with a view to
14 the fact that if it didn't work we would move
15 potentially to gates.

16 And certainly in discussion with those
17 people -- with those tourist operators on the road for
18 which we've closed it and, in fact, the most recent
19 discussions that I can recall within the last month and
20 a half on the Tri-Lake Road south of Nestor Falls where
21 we've been asked to maintain that closure even longer,
22 which was to have come off for legitimate reasons, and
23 we've gone along with the industry request to keep it
24 closed.

25 My sense is that the closed road, the

1 signs with good enforcement by conservation officers
2 are working well in Kenora District. And from that
3 perspective, if you want to call that a study, I guess
4 our conclusion would be there is no reason to put a
5 gate up therefore.

6 Q. That's your own impression from
7 talking to some people; is that correct?

8 A. That's our impression from a
9 monitoring program, again, with those conservation
10 officers, that the number of contacts that they are
11 getting in terms of charges laid, people being seen
12 down those, with a somewhat concerted effort and in our
13 discussions with the tourist industry and the amount of
14 feedback we've got in terms of letters or telephone
15 calls or requests to do more; yes, that's my
16 conclusion.

17 Q. I would like to move to the issue of
18 Exhibit 695 which is the land use permit -- actually it
19 is the bundle -- it is the application in the bundle
20 for the work permit.

21 MS. BLASTORAH: Mr. Chairman, just for
22 the record, that's the multi-use work permit not the
23 land use permit.

24 MR. EDWARDS: Thank you, Ms. Blastorah,
25 for that classification.

1 Do you have that, Mr. Chairman?

2 THE CHAIRMAN: Yes, we do.

3 MR. EDWARDS: Q. Mr. Adamson, it was you
4 who introduced this exhibit, I believe?

5 MR. ADAMSON: A. No, it was Mr.
6 Tenaglia.

7 Q. Mr. Tenaglia, perhaps I can address
8 these questions to you then, sir. Do you have a copy
9 of the application before you?

10 MR. TENAGLIA: A. Yes, I do.

11 Q. At the very top it lists who can be
12 the applicant for a work permit and it says applicant
13 cannot be a sub-contractor. Why is that?

14 A. I'm just trying to find that.

15 Q. It's right at the very top of the
16 form under the words Ministry of Natural Resources.

17 A. I guess it's the principal of the
18 person who is really responsible for doing the work
19 that must take out the application.

20 For example, there may be -- in the road
21 building business there may be three or four
22 sub-contractors that is involved -- that are involved
23 in building a particular road; one contractor may be
24 cutting the right-of-way, another contractor may be
25 bulldozing, another contractor may be gravelling, where

1 in fact it is the logging company who is responsible
2 for building that road, ultimately responsible for
3 building that road and ensuring that that road is built
4 to a certain standard.

5 Q. Would the name of the applicant then
6 generally be expected to be, for purposes of building a
7 road, a forest management company, timber management
8 company?

9 A. Whoever may be responsible for that
10 road, yes.

11 Q. Would you expect that it would be the
12 FMA holder?

13 A. In some cases. In other cases on a
14 Crown unit it may be just a very small -- well, I've
15 referred to them as a contractor, it may be the
16 licensee who has a small district cutting licence
17 that's going to sell his thousand cubic metres of wood
18 to one of the FMAs.

19 Q. And is part of the reason that that
20 applicant cannot be a sub-contractor that you're
21 concerned that the applicant be accountable?

22 A. That's correct.

23 Q. Would you agree with me, sir, that
24 the documents supporting the application for the work
25 permit ought to be public documents?

1 A. I believe they are.

2 Q. Would you agree with me that they
3 ought to be?

4 A. There is a question of
5 confidentiality when it comes to mining activities.

6 Q. Well, let's step back and talk about
7 timber management. Is there anybody on this panel who
8 thinks that these documents ought not to be public?

9 MS. BLASTORAH: Mr. Chairman, my
10 recollection of the evidence-in-chief is that we did
11 discuss this and it was indicated at that time that
12 these documents are public records, except with the
13 exception noted by Mr. Tenaglia relating to mining
14 roads.

15 I stand to be corrected, but that's my
16 recollection of the direct evidence.

17 THE CHAIRMAN: And are you indicating,
18 Ms. Blastorah, that with the exception being mining
19 roads that the roads are built primarily for the
20 purpose of accessing mines as opposed to being forest
21 management roads which may have an offshoot use of
22 accessing mines?

23 MS. BLASTORAH: I'm not sure I understand
24 your question, Mr. Chairman. But if I understand you
25 to mean that the entire document would be confidential

1 if it related exclusively to mining roads as opposed to
2 forest access roads...?

3 THE CHAIRMAN: Well, you seem to indicate
4 that the evidence was that there was an exception as to
5 whether they would be a public document, the supporting
6 material for an application, if it related to a mining
7 road.

8 And I guess my question is: Do you
9 separate into categories a road that would be solely
10 for the use of a mining application or one that would
11 be a forest management road but with a mining use?

12 MS. BLASTORAH: Mr. Chairman, I don't
13 think the evidence was given on that, so I should let
14 Mr. Tenaglia answer that.

15 MR. TENAGLIA: If I might Mr. Chairman,
16 on part (b) of the application for work permit it does
17 indicate that mineral exploration information is
18 confidential.

19 It may not be an application for a mining
20 road; I don't believe that that is the concern. It's
21 the staking, it's the line cutting that is of a
22 confidential nature where the patents are being
23 identified or where the actual exploration and staking
24 is the confidential aspect of it.

25 Once the road is being built, I don't

1 believe that is of a confidential nature.

2 THE CHAIRMAN: And would that precede an
3 application for a road for timber management purposes?

4 MR. TENAGLIA: Generally I would think it
5 almost always does.

6 THE CHAIRMAN: Okay. Thank you.

7 MR. EDWARDS: Q. Sir, if I could ask you
8 to confine your evidence solely to the construction of
9 roads and bridges and other undertakings which relate
10 to timber management, is there any reason that this
11 documentation; that is to say, the application and any
12 maps or conditions which may be applied to the licence,
13 ought not to be public?

14 MR. TENAGLIA: A. No.

15 Q. Does any other member of the panel
16 believe to the contrary?

17 THE CHAIRMAN: I think Ms. Blastorah
18 indicated that it's on the record, Mr. Edwards, that
19 such documents are in fact public, not just ought to
20 be.

21 MR. TENAGLIA: In fact, you will notice
22 at the bottom of the application for work permit it
23 says:

24 "The information obtained on this
25 application is a public record."

1 MR. EDWARDS: Thank you.

2 Q. Sir, is there any reason that you
3 don't include a request for a street address or the
4 name of a place where the person can be located?

5 I see you only seek a mailing address.
6 Do you think that might be a help to the form to have a
7 street address or where the person could be found?

8 MS. TENAGLIA: A. In some cases the
9 street address is the mailing address.

10 Q. In many cases it is not. Now, would
11 it be helpful to require both the mailing address and a
12 street address?

13 A. It may be and, again, that is the
14 kind of information that the Ministry would be looking
15 for, those kind of comments in the review of this
16 document.

17 I believe NOTOA was sent a letter from
18 the Executive Director of the Lands Branch that
19 indicated that we were going to go through a review of
20 this document and try to tidy up any loose ends.

21 MR. PYZER: A. Mr. Edwards, I don't know
22 if this is the appropriate spot, but you asked me a
23 question a couple of minutes ago and I just found the
24 answer to it relative to the number of charges we've
25 laid and whether in fact that information is recorded.

1 Q. Yes, thank you. Could you respond to
2 that now, Mr. Pyzer?

3 A. What I have actually is from the fish
4 and wildlife supervisor and apparently that information
5 in terms of charges on public lands would be recorded,
6 in fact is recorded on -- from the offence and
7 prosecution reports from each of the conservation
8 officers.

9 And in Kenora District, as an example, in
10 the past five years we've laid 11 charges on the Werner
11 Lake Road, 18 on the English River Road, 5 on
12 Umfreville, 5 on the Tri-Lake, 6 on Mabrin, 5 on
13 Cameron, one of which included a tourist operator, one
14 Ministry employee was charged being on that road after
15 hours, we charged him as well.

16 So that information does look like it is
17 available and it would look like it's available on a
18 district-by-district basis, and it's both by Public
19 Lands Act 26(2) as well as 49(5).

20 MR. EDWARDS: Is there any problem with
21 filing that, Mr. Freidin, or is it in a form in which
22 it could be filed, sir?

23 MS. BLASTORAH: Mr. Chairman, the
24 information is on the record. I don't really see any
25 point in cluttering the record with a piece of paper

1 that has already been read in.

2 THE CHAIRMAN: Whereabouts is it on the
3 record?

4 MR. FREIDIN: It has just been read into
5 the record, is what I think was the comment.

6 If what Mr. Pyzer has read into the
7 record is what's on the document, then why put in a
8 piece of document -- another piece of paper to indicate
9 what's already in the evidence.

10 THE CHAIRMAN: Well, is that the only
11 part in that document where this matter is addressed or
12 is it --

13 MR. PYZER: It does name some names, it
14 names people's names, and there are some handwritten
15 notes about the officer that laid the charge and who
16 the tourist operator is and I would prefer not to,
17 if...

18 MR. EDWARDS: Perhaps I can speak to Mr.
19 Freidin at the break. I would like to see some
20 document which sets the statistics out in some fashion.
21 Perhaps we can --

22 THE CHAIRMAN: All right. See if you
23 can organize it with Mr. Freidin as to what they are
24 willing to produce. If you have a problem, Mr.
25 Edwards, come back to the Board.

1 MR. EDWARDS: Yes. Thank you, Mr.
2 Chairman.

3 Q. I would like to raise some questions,
4 please, about Exhibit 686 which is the Crown Land
5 Bridge Management Document. Mr. Tenaglia, I understand
6 this is a document that you were involved in the
7 creation of?

8 MR. TENAGLIA: A. I was a member of one
9 of the committees, yes.

10 Q. There were two committees, you were a
11 member of the MNR Provincial Bridge Management
12 Committee?

13 A. Correct.

14 Q. Would you regard this as an important
15 document?

16 A. Yes, it is.

17 Q. And it's a document which has some
18 significant impact on the use management strategies
19 of -- with respect to roads?

20 A. Yes, it does.

21 Q. It certainly delineates a range of
22 options that use managers might adopt?

23 A. It presents options for the district
24 manager to consider in certain situations, yes.

25 Q. At page 57 of that document, sir,

1 commencing with the second paragraph, you state -- or
2 at least the document states as follows:

3 "Prior to the adoption of this policy
4 it is recommended that this committee
5 report be reviewed by the following
6 groups in December..."

7 And it lists quite a number, from the
8 Ontario Forest Industries Association down to the
9 Ministry of Transportation, and the document is dated
10 March of 1989?

11 A. Correct.

12 Q. Presented by the Deputy Minister
13 under covering letter of April 14th, '89?

14 A. Yes.

15 Q. Yes. And also indicating in the
16 document under the covering letter that it is to be --
17 that the staff has been instructed to implement the
18 recommendations and policy effective April 1st, '89?

19 A. Yes.

20 Q. That's also noted at the top of page
21 57:

22 "It is recommended that the policy on
23 page 58 be adopted and effective April
24 1st."

25 Now, sir, how were you planning on

1 consulting with the affected groups when the document
2 was sent out on April 14th and it was adopted on April
3 the 1st?

4 A. The consultation took place prior to
5 that April 1st date.

6 THE CHAIRMAN: Is the December referred
7 to last December?

8 MR. TENAGLIA: December, 1988.

9 MR. ADAMSON: Perhaps I could help out
10 here. The report was initially written as a draft
11 version around November and it was circulated for
12 comment and comments were received, reviewed and the
13 final version was put out in March. So it just happens
14 that that particular page wasn't changed in the final
15 version.

16 MR. EDWARDS: Q. And your evidence is
17 that it was circulated to all those persons that are
18 listed?

19 MR. ADAMSON: A. That's my
20 understanding, yes.

21 Q. I see. Thank you. Are you sure of
22 that, Mr. Adamson?

23 A. I didn't do the circulation
24 personally, but I know we prepared this list of who
25 should receive it and people in main office were

1 supposed to circulate it to those groups.

2 Q. I see. Who actually gave the
3 instruction out to circulate it? Would that have been
4 you, Mr. Tenaglia?

5 MR. TENAGLIA: A. No, I believe it was
6 the Chairman of the committee.

7 Q. Who was...?

8 A. Mr. Dave Gordon.

9 Q. Now, I'm interested in the list of
10 persons to whom that was to be circulated to or perhaps
11 in fact it may have been circulated to.

12 Mr. Pyzer, I have some questions for you
13 about this, sir. They list the OFIA and the Ontario
14 Lumber Manufacturers' Association, et cetera. You have
15 that list; do you, sir?

16 MR. PYZER: A. I see it here, yes.

17 Q. And the only tourist organization
18 that's listed is the Northern Ontario Tourist
19 Outfitters?

20 A. Yes.

21 Q. And you will agree with me that
22 Exhibit 685, that single page that was put in from it,
23 policy LM-90206, to be Exhibit 777 -- do you have that?

24 A. I'm getting it shortly here. Yes, I
25 see that.

1 Q. That also identifies the Northern
2 Ontario Tourist Outfitters Association as a tourist
3 organization to speak to. Are there any other tourist
4 organizations represented on that list?

5 A. Other than the others as determined
6 locally.

7 Q. Certainly there's no others of
8 provincial -- of sufficient provincial import to be
9 listed here?

10 A. No, that's -- I would assume that's
11 true, yes.

12 Q. All right. And you would agree that
13 your -- you would see it as part of your duty, sir, to
14 identify all of the stakeholders who might be impacted
15 by timber management activity?

16 A. Yes.

17 Q. And if there had been another group
18 of stakeholders in the tourist industry who were as
19 significant as the NOTOA organization you would have
20 identified them because that would have been your duty?

21 A. You mean at the district level?

22 Q. I mean generally. Why does this
23 document deal only with NOTOA as opposed to 15 other
24 representative groups?

25 A. I guess I'm probably the wrong person

1 to be asking that question. I did not write the
2 strategy or the policy; I don't know.

3 It's dealing at a provincial level and
4 certainly in terms of northern Ontario and the forest
5 industry, NOTOA has been the -- certainly the key actor
6 in the -- the key group that we have dealt with.

7 And in terms of this talking about
8 coordinating resource access road program as direction
9 to the field, certainly to me as a district manager it
10 says others as determined locally, and I can tell you
11 that I probably don't deal with NOTOA as much as I deal
12 with KDCA, NWOTA, all of our local associations, Sunset
13 Country.

14 Q. KDCA and NWOTA are both affiliates of
15 NOTOA?

16 A. That's correct.

17 Q. Right. They are the regional members
18 of NOTOA; correct?

19 A. Yes.

20 Q. All right. So you are, in effect,
21 dealing with NOTOA when you deal with those ones too;
22 aren't you?

23 A. Dealing with affiliates, that's
24 correct. Maybe I don't understand your question.

25 Q. Well, can we safely assume, sir, that

1 if another stakeholder which represented the interests
2 of tourism was identified it would be on these lists,
3 or do you ignore other stakeholders?

4 A. No, that's why there's No. J, others
5 as determined locally.

6 Q. If there was another stakeholder
7 organization in the tourist industry which the Ministry
8 thought it ought to deal with on a provincial level it
9 would be on the list; correct?

10 A. Again --

11 MS. BLASTORAH: Mr. Chairman, I think he
12 has already answered that.

13 MR. EDWARDS: I don't think he has, with
14 respect.

15 MR. PYZER: Well, I...

16 THE CHAIRMAN: Well, why don't we ask it
17 a different way, Mr. Edwards.

18 Do you consider NOTOA the only tourist
19 organization at the provincial level that should be
20 consulted in connection with these matters?

21 MR. PYZER: In terms of timber access
22 roads?

23 THE CHAIRMAN: Yes.

24 MR. PYZER: At the provincial level I
25 would have to say they are the major group. Personally

1 I guess I cannot think of too many others. In fact, I
2 guess I can't think of any others.

3 MR. EDWARDS: I bet you can't. Thank you
4 very much, sir.

5 Mr. Chairman, could I ask for a brief
6 break at this moment.

7 THE CHAIRMAN: Very well.

8 MR. EDWARDS: I may be moving to a
9 different area and I just would like a couple of
10 minutes or ten minutes, if you have got it.

11 THE CHAIRMAN: 15 minutes?

12 MR. EDWARDS: 15 is fine. Thank you.

13 THE CHAIRMAN: Okay, thank you.

14 ---Recess taken at 4:05 p.m.

15 ---On resuming at 4:30 p.m.

16 THE CHAIRMAN: Thank you. Be seated,
17 please.

18 MR. EDWARDS: Mr. Chairman, during the
19 break I spoke with Ms. Blastorah and we have agreed
20 that we will file that document. We are going to
21 delete the name. There is the name of a person penned
22 in at the bottom of the document and we are intending
23 to delete that, but the document otherwise is
24 acceptable to be filed as an exhibit.

25 THE CHAIRMAN: Very well. Do you want to

1 give it a number now?

2 MS. BLASTORAH: We will make copies
3 available, Mr. Chairman. We will have to photocopy it
4 and delete the name on the copies. There is a
5 handwritten comment and we are simply going to delete
6 the name from the comment.

7 THE CHAIRMAN: Very well. Exhibit 779.
8 What can we call that document?

9 MR. FREIDIN: You can call it a
10 memorandum from Peter Waring, W-a-r-i-n-g, to Mr. G.G.
11 Pyzer, dated June the 27th, 1989, re: travel on closed
12 road charges.

13 THE CHAIRMAN: Thank you.

14 MR. EDWARDS: Thank you, Mr. Chairman.

15 ---EXHIBIT NO. 779: Memorandum from Peter Waring
16 to G.G. Pyzer dated June 27, 1989,
re: travel on closed road charges.

17 MR. EDWARDS: Q. Mr. Pyzer, during your
18 examination-in-chief, sir, you gave some evidence about
19 the views of tourist outfitters in the Kenora District.
20 Do you recall that testimony?

21 MR. PYZER: A. I would prefer to be
22 referred to the appropriate page.

23 Q. I certainly will do that, but you
24 generally do recall discussing the topic?

25 A. Yes, in a number of cases.

1 Q. Thank you. And, sir, would you agree
2 with me that the Kenora District is a bit unusual for
3 northern Ontario in that it is so close to a large
4 metropolitan area, Winnipeg, it really operates as
5 Winnipeg's Muskoka?

6 Would you agree it has some different
7 aspects from a tourism point of view than --

8 A. It certainly has different aspects of
9 tourism, absolutely, yes.

10 Q. It has had road-dependent tourism for
11 a long time; has it not?

12 A. It certainly has some tourist
13 operators that are road dependent, yes.

14 Q. It has had road-dependent tourism for
15 a long time; has it not?

16 A. Yes. I just don't -- I wouldn't want
17 to leave the impression though that all of our tourist
18 operators are road dependent, there are many that are
19 fly-in dependent.

20 Q. Yes, that's true. But you will agree
21 with me, from your general knowledge of northern
22 Ontario, that Kenora would have a larger component that
23 is road dependent than many of the other districts?
24 You would have to agree with that, sir.

25 A. Why?

1 Q. Because it's true; is it not?

2 A. Gee, I can think of a lot of
3 districts that have -- that probably -- you know, it's
4 the ratio I guess. We have a large number of both, in
5 fact that is what makes the district so unique.

6 I think I mentioned in my lead evidence
7 there are more tourist operators on Lake of the Woods
8 than the entire Province of Manitoba. So when you
9 compare those road accessible ones to the fly-in, they
10 may be larger but the number of fly-ins are probably
11 still as large or larger than many other districts.

12 Q. Sir, you have been throughout the
13 rest of northern Ontario; have you--

14 A. Yes.

15 Q. --other than Kenora?

16 A. Yes.

17 Q. Would you agree with me that
18 generally speaking Kenora is more dependent on road
19 accessible tourism than places like Nipigon District,
20 the northeast?

21 A. Well, you mention Nipigon, here in
22 Thunder Bay District. I don't believe there is a main
23 base American plan lodge in the entire northcentral
24 region and I have several on a fly-in basis.

25 So if you're telling me that makes the

1 northcentral region, those districts you just mentioned
2 more important from a fly-in, I couldn't agree with
3 that.

4 THE CHAIRMAN: Does anything turn on it,
5 Mr. Edwards, as to whether it's the most dependent?

6 MR. EDWARDS: Well, I just wanted Mr.
7 Pyzer to be candid in acknowledging that Kenora has
8 some rather unique aspects. If he is not prepared to
9 do that --

10 MR. PYZER: It does. It certainly does,
11 yes.

12 MR. EDWARDS: Q. Kenora services
13 Winnipeg?

14 MR. PYZER: A. Partially.

15 Q. A lot of people from Winnipeg go to
16 Kenora. How long is it -- what distance is that, sir;
17 do you know?

18 A. It's approximately 125 to 135 miles.
19 However, most of the fishing and hunting pressure of
20 course is American based as opposed to Canadian
21 non-resident.

22 Q. All right. And a lot people come
23 from the States as well--

24 A. Absolutely.

25 Q. --to use the Lake of the Woods in the

1 Kenora District?

2 A. That's correct. In fact it is
3 primarily American based -- American tourist based.

4 Q. There a lot of cottages, not camps
5 but cottages around the Lake of the Woods?

6 A. Again, you know - and I'm certainly
7 not trying to play games with you - but because it's
8 the second largest inland lake in the province, a lot
9 of lakes -- or a lot of cottages, relative to the
10 Muskokas, no, there is very, very few. In fact, the
11 entire central core of Lake of the Woods is being
12 managed for no cottages.

13 I think there are about 2,000 cottages if
14 that helps in the Lake -- in what used to be the old
15 Lake of the Woods general land use planning area which
16 includes Lake of the Woods, the Winnipeg River system,
17 that whole English/Wabigoon which is very remote and
18 fly-in. I think it's in the neighborhood of 1,500 to
19 2,000 cottages although, again, I stand to be
20 corrected.

21 Q. So you would agree with me that there
22 are --

23 A. 1,800 lakes that includes --
24 including one over a million acres.

25 Q. Sir, there are 1,500 to 2,000

1 cottages?

2 A. Yes.

3 Q. You accept that?

4 A. I think I gave you those figures.

5 Q. Yes, you did. Sir, the nature of the
6 tourism industry in Kenora was described by you as
7 one -- as being one where the outfitters, some of them
8 liked road access and some of them didn't. Is that a
9 fair synopsis of the way you put your evidence?

10 A. Yes. I think the key point was that
11 it's very difficult to generalize one side or the
12 other, you have to look at each individual's
13 operations.

14 Some of the very largest drive-to
15 operations - and you may want to categorize them as
16 drive-to or road accessible tourist operations - in
17 fact, a large component and what they rely on, as
18 certainly Lori will tell you, is they rely on their
19 outpost camp.

20 What they do is take people in for two or
21 three days to the road accessible lodge and then as an
22 experience fly you out for a day or two day to one of
23 their outcamps and probably the vast majority or a good
24 majority of them, in one form or another, have both the
25 road accessible and that fly-out option.

1 Even Minaki Lodge, again as an example,
2 is now working with Grassy Narrows in terms of the Old
3 Bald Lake Lodge to do something very similar.

4 So it's hard -- you know, if you look at
5 a Minaki Lodge and you would say: Well, that's road
6 accessible tourism. In fact, they are hooking in with
7 one of the largest fly-in potential businesses in our
8 district as a main base lodge.

9 Q. Right. So even the -- some of the
10 road accessible lodges are dependent in part on the
11 availability of the fly-in experience?

12 A. Correct.

13 Q. It's your experience that that
14 product is what sells even some of the road accessible
15 lodges to the tourist; is that correct?

16 A. Absolutely. Two days ago I happened
17 to be down -- in fact, I was out fishing with one of
18 the Directors of NOTOA on Saturday, and that was the
19 whole point of -- you know, when we were out talking
20 about it is, it's a drive-to operation, but in fact
21 it's remote, it's -- Murve Wiznesky on west end --
22 Stanley's West Arm Camp on Eagle and it's a drive-to
23 camp, but really what he's marketing is a remote
24 wilderness experience and he has got eight or nine
25 outpost -- or sorry, portage lakes that he has got

1 boats.

2 And, again, I am only trying to -- I'm
3 agreeing with you in that it's an extremely difficult
4 thing to say whether road accessible -- you have to
5 look at each operation on its own and make a decision.

6 Q. Mr. Wiznesky's operation is in
7 Vermilion Bay?

8 A. That's correct.

9 Q. Is that in the District of Kenora?

10 A. It's right on our border. In fact,
11 he crosses -- some of his lakes or some of the lakes
12 that he fishes, it's right on the border at that Pine
13 Road right at the far end of Eagle. In fact, our fish
14 management zone, that Onage/Dogtooth Lake zone in fact
15 comes across.

16 So from a fish management perspective,
17 some of our strategies in fact straddle the district
18 and we have some lead responsibilities for it.

19 Q. And his is an example of a road
20 accessible lodge which also depends on the fly-in
21 experience?

22 A. A really good example where he has
23 got a five star resort on the lake that you can drive
24 to, but if you like to portage back in some lakes you
25 can do it from the camp and he has a fly-in operation

1 on Papeonga up on -- east of Ear Falls, one of those
2 closed roads we will probably talk about later.

3 Q. All right. Sir, the point I'm
4 getting to is: In your evidence you indicated that
5 there are a number of outfitters who seem to favour
6 access and a number who seem to be generally opposed to
7 it, and you seem to have some difficulty in drawing a
8 balance.

9 And I'm just going to suggest to you,
10 sir, that the only organization which has spoken out
11 consistently on this issue, the only organization
12 representing the tourism industry, has been
13 consistently concerned about the extension of road
14 access?

15 A. Absolutely, NOTOA.

16 Q. You won't disagree with that?

17 A. No.

18 MR. EDWARDS: Well, I think I have
19 shortened my cross-examination by at least half an hour
20 here, Mr. Chairman?

21 MR. PYZER: The only point I guess I
22 would add, of course, is that many of those people--

23 THE CHAIRMAN: Maybe not, Mr. Edwards.

24 MR. PYZER: --many of those people who
25 object, of course, are not members of NOTOA.

1 MR. EDWARDS: Q. Yes, I was just coming
2 to that. Now, you've already agreed with me, sir, that
3 NOTOA is recognized by the MNR as -- it would appear to
4 be the organization speaking on behalf of tourism as
5 impacted by timber management. Yes or no?

6 MR. PYZER: A. That's correct.

7 Q. And if these other persons to whom
8 you spoke belonged to other organizations which are
9 representative of anybody you would have heard of them;
10 yes or no?

11 A. Absolutely.

12 Q. Absolutely yes?

13 A. Absolutely yes.

14 Q. Thank you.

15 A. Many of them do belong to NOTOA.
16 They simply don't agree with that particular stance or
17 position that the organization has taken.

18 Q. Some of them belong to NOTOA. Some
19 of the ones -- the examples that you gave, those
20 individuals do not belong; is that correct?

21 A. Some belong; some don't, that's
22 correct.

23 Q. But you've been - I can't say you've
24 been around since time immemorial, sir - but you've
25 certainly been around long enough to know that NOTOA

1 had a consistent concern for a number of years about
2 the effects that access will have on the tourist
3 industry?

4 A. That's correct.

5 Q. And it has spoken --

6 A. Very eloquently in opposition to
7 roads.

8 Q. Thank you. So we don't have to get
9 into a long discussion as to whether these two examples
10 that you gave were representative of some other
11 organization that we don't know about?

12 A. No, absolutely.

13 Q. Well, that does save time. Mr. Ward,
14 I would like to refer to some of the examples which you
15 gave in your photographs, sir, and I'm not going to ask
16 you to put them back up on the screen again.

17 I believe they are referred to in your --
18 in the material, and if we might just turn to the
19 statement of evidence.

20 MS. BLASTORAH: Mr. Chairman, Mr. Edwards
21 I don't believe was here this morning when we gave out
22 hard copies of Mr. Ward's photos. Perhaps I could
23 provide him with a copy.

24 MR. EDWARDS: I always miss out on all
25 these treats. Thank you, Ms. Blastorah.

1 Mr. Freidin is encouraging me to spend
2 more time here, but I'll attempt to be as relatively
3 brief as I can.

4 Q. Mr. Ward, you have copies of these
5 before you, sir; do you?

6 THE CHAIRMAN: It is Exhibit 773.

7 MR. EDWARDS: 773.

8 MS. BLASTORAH: (handed)

9 MR. EDWARDS: Mr. Chairman, if I can just
10 have a movement. I just got this and I need to make
11 sure that my numbers tie up with the ones that I have.

12 Q. Mr. Ward, do you have those
13 photographs available now, sir?

14 MR. WARD: A. Yes, I do.

15 Q. Thank you. Sir, just to make sure
16 that we're looking at the same documents with the same
17 reference, the picture that's marked as No. 5 of
18 Exhibit 773, would that be the use of fine soils as
19 fill around culverts taken on the Caribou Road, Kenora
20 District?

21 A. No, it isn't.

22 Q. That's not the one you are referring
23 to?

24 A. It's the Whitemud River, Red Lake
25 District.

1 Q. The numbers have changed somewhat
2 from the --

3 A. I didn't use exactly the same slides
4 that I have in my direct evidence. I added different
5 slides, had some additional slides as well, some of the
6 ones that I've included.

7 MR. EDWARDS: Could I have a moment,
8 please, Mr. Chairman.

9 Q. Sir, are you able to refer to the
10 photograph taken by you listed as No. 5 in the
11 statement of evidence which indicates that it refers to
12 the Caribou Road in Kenora District?

13 MR. WARD: A. Yes.

14 Q. Do you have that photograph before
15 you?

16 A. Yes, I do.

17 THE CHAIRMAN: What number is that, Mr.
18 Edwards?

19 MR. EDWARDS: It's listed as No. 5 at
20 page 270 of the statement of evidence.

21 Q. And would that --

22 MS. BLASTORAH: No, I believe it's on
23 page 301, Mr. Chairman.

24 MR. EDWARDS: Thank you, Ms. Blastorah.
25 It's reproduced at page 301 of the witness statement.

1 Q. Sir, you took the photograph?

2 MR. WARD: A. That's correct.

3 Q. Now, you may not have been involved
4 in this other than as a scientist, sir, but do you know
5 who paid to repair the damage in that instance?

6 A. I believe that Natural Resources
7 corrected that shortly thereafter the photo was taken
8 by rip rapping the slopes.

9 Q. I see. And Natural Resources paid
10 for that?

11 A. I believe so.

12 Q. Mr. Pyzer, are you able to confirm
13 that?

14 MR. PYZER: A. Not to pick on Mr. Ward,
15 first of all, there is no Caribou Road in Kenora
16 District.

17 Q. Well, it's certainly referred to at--

18 A. Yes, it does.

19 Q. --page 270, however...

20 A. But that's incorrectly identified,
21 it's not the Caribou Road, it happens to be the...

22 Q. Caution?

23 A. Caution Lake Road.

24 Q. Caution Lake --

25 A. We'll call it a typo.

1 Q. All right.

2 A. But it's the Caution Lake Road, and
3 that picture happened to be taken during construction,
4 before a construction had been completed, and when I
5 saw that photograph I asked probably all the questions
6 you're about to ask me, went out and physically
7 inspected the site with the regional engineer when it
8 was finished and the final assessment was: This is
9 possibly one of the best examples of a culvert and
10 stream crossing, and about the only way the district
11 could have done it better was to get down on their
12 hands and knees with a toothbrush. And that regional
13 engineer is sitting on this witness panel.

14 THE CHAIRMAN: With his toothbrush?

15 MR. PYZER: I don't know. Did you bring
16 it, Bruce?

17 MR. EDWARDS: Q. Sir, what I'm looking
18 for are examples in your photographs of where you have
19 seen damage, to your knowledge, is it always the MNR
20 who has paid to repair it, or have there been other--

21 MR. WARD: A. No, that's not correct.

22 Q. --persons who paid for it?

23 A. The same page, 301, the Whitemud
24 River which is photograph No. 7--

25 Q. Yes.

1 A. --that again was replaced by a timber
2 company then corrected with a larger culvert installed
3 there.

4 Q. All right. And did the -- to your
5 knowledge, did the timber company bear the cost of the
6 replacement?

7 A. Yes.

8 Q. Was there any cost sharing of any
9 sort or would you know?

10 A. I wouldn't know the answer to that.

11 Q. All right. On repairs - and Mr.
12 Adamson might be better able to answer these
13 questions - if it's necessary to effect a repair
14 because of an improper design or improper construction
15 techniques who might -- who bears that cost? Does the
16 province bear it or does the company bear it or is
17 there a general practice?

18 MR. ADAMSON: A. I think in the future
19 it would be the organization who installed the culvert.
20 So if the industry didn't install it properly they
21 would bear the cost of installing it in the future.

22 The instance that Mr. Ward cited here was
23 a company road and it washed out and they had to
24 restore access. There are other installations I'm
25 aware of that the Ministry has installed them, gone

1 back and done rehabilitative work as well.

2 THE CHAIRMAN: Mr. Adamson, if the bridge
3 or culvert is constructed in accordance with what the
4 Ministry felt was appropriate initially and it turns
5 out to be not the case, would the province then pick up
6 the tab for any repairs?

7 MR. ADAMSON: Yes. We are going through
8 that sort of phase now with the introduction of the new
9 environmental standards. People are looking at
10 crossings that were installed a year or two ago and
11 it's recognized that it's not fair to apply the current
12 standards to the company-built installations a few
13 years ago, and I think the Ministry may be contributing
14 to repair of those.

15 MR. EDWARDS: Q. Is that policy set out,
16 sir, anywhere? I don't recall it.

17 MR. ADAMSON: A. Well, it's not a
18 policy, it's dealt with on an individual basis.

19 Q. At the district level?

20 A. In terms of this interim thing, the--

21 Q. Yes.

22 A. --interim assistance? Yes, it would
23 be dealt with at a district level case-by-case and they
24 would have to budget the money to do repair.

25 Q. Mr. Tenaglia, I have a couple of

1 brief questions which relate to part of your evidence
2 in the statement of evidence. At page 101 you included
3 some material from the District Land Use Guidelines in
4 the Nipigon District?

5 MR. TENAGLIA: A. That's correct.

6 Q. Do you have that in front of you,
7 sir?

8 A. Yes.

9 Q. I'm going to ask you, sir, to refer
10 to page 102, the part referring to Caribou Lake which
11 indicates as follows:

12 "This area is located in the northwest
13 part of the district and is utilized
14 primarily for commercial tourism and
15 public recreation. Resource extraction
16 activities also take place and will
17 probably grow in importance in the
18 future."

19 Under the heading of Land Use Intent:

20 "The primary use for this area will be
21 commercial tourism. Extractive
22 industries such as timber harvesting,
23 while growing in importance, will remain
24 secondary. Road access will be managed
25 to maintain commercial tourism and fish

1 and wildlife habitat. Land use conflicts
2 will be resolved recognizing the
3 importance of commercial recreation in
4 the area."

5 Sir, you included that in your material
6 as an example of how the land use guidelines can be
7 used to impact use management in particular areas; is
8 that the reason or what was the reason?

9 A. That's correct, and also to identify
10 that in certain areas of the province timber management
11 may not be the primary use. In this particular case
12 here, having -- when the District Land Use Guidelines
13 were prepared, commercial tourism was identified as the
14 primary use and I think that's unique.

15 Q. It's unique to the province?

16 A. Well, it certainly was - I can't
17 speak for the entire province - it certainly was unique
18 in Nipigon District. Most of the other places was
19 primarily integrated operations where timber management
20 may have the primary use or an IRM aspect.

21 But in this particular case it was
22 recognized as commercial tourism as the primary use,
23 and it's clearly evident that timber management plays a
24 secondary use and activities that timber management
25 will be carried out -- any activities carried out by

1 forest companies will obviously be more impacted in
2 this zone than in other zones.

3 Q. Would the primary impact be the fact
4 that designated canoe routes will have 120-metre
5 shoreline reserves? Would that be the -- would there
6 be any impact other than that that's under Crown land
7 recreation?

8 A. No, I don't think so. When we
9 prepared -- or when the companies prepared the, at that
10 time it was an operating plan, certainly the use
11 management strategies for the roads clearly gave us the
12 mandate to ensure the strongest protection for any
13 commercial tourism operation. And based on that
14 particular mandate, as laid out in the District Land
15 Use Guidelines, the decision was to gate the roads
16 going into that particular zone.

17 Q. Are you able to describe the zone,
18 sir, is that south of the CN line or north of the CN
19 line?

20 A. I think I have a map here.

21 Q. Would you be able to put that up? I
22 think it would assist me and the panel.

23 A. I guess it is this area here north of
24 the CN line. From about Armstrong there is a northeast
25 line that heads out to White Clay Lake. This area here

1 is the Caribou Lake area. Within that area or there is
2 a portion in there that is the Wabakimi Wilderness
3 Park. That's the zone where commercial tourism was
4 identified as primary use.

5 Q. I see. Now, Wabakimi is a fair-sized .
6 wilderness park? Do you recall the -- you don't recall
7 the hectares?

8 A. No, I don't.

9 Q. And would you agree with me that the
10 terrain around that area is one which consists of
11 shallow soils, quite a bit of rock and quite a bit of
12 swamp?

13 A. It's broken. There are some areas
14 that are very deep, deep sandy sites.

15 Q. Generally speaking, would you agree
16 that it's fairly rocky? Are there large areas that are
17 inappropriate for timber management activities?

18 A. No, I don't think I can generally
19 agree with you.

20 Q. All right. Would you generally agree
21 with me that there is now a proposal underway to amend
22 the District Land Use Guidelines to delete the
23 protections provided at page 102 of the document?

24 A. I was not aware of that.

25 Q. You are not aware of a proposal to

1 amend the DLUG for Nipigon to--

2 A. No, I was not of aware of that.

3 Q. --narrow the reserves?

4 A. No.

5 Q. Oh, I see. Are there zones of
6 primary emphasis on tourism in the Wawa District, sir,
7 other than the Wawa fume-killed treeless area which
8 we've previously discussed?

9 A. I don't believe that they're worded
10 in the same fashion where they are identified as, you
11 know, primary use for commercial tourism, no.

12 Q. Mr. Pyzer, are there zones or areas
13 in the Kenora District which are identified as -- in a
14 fashion similar to this Caribou area of the Nipigon
15 District?

16 MR. PYZER: A. I believe so, yes.

17 Q. Which ones are they?

18 A. There is an area north of -- north
19 and west of the English River system. Certainly the
20 Aulneau. In fact, we had a Lake of the Woods that we
21 talked - I mentioned that earlier - had a Lake of the
22 Woods Land Use Guideline which predated the District
23 Land Use Guidelines and, in fact, the central -- in
24 fact, all of the Lake of the Woods area has very
25 special management from a timber perspective

1 recognizing that tourism is important.

2 And, in fact, on the Aulneau Peninsula --
3 in fact on the Aulneau it's not tourism, on the Aulneau
4 wildlife management, but again it's wildlife management
5 from a -- because of the number of tourist outfitters
6 that hunted from a primitive weapons perspective, as
7 well of course as local residents.

8 So we have a number of zones that are not
9 timber first, if you will, although certainly the vast
10 majority -- I believe in all districts in the province
11 are to try and make them as multi-use and try and make
12 them win/wins as possible.

13 Q. How are those zones identified in
14 Kenora District, sir?

15 A. They would be identified very similar
16 to this. In fact --

17 Q. In the District Land Use Guidelines?

18 A. Absolutely, yes. In fact, all of the
19 districts will have an intent and a purpose and they
20 will all be laid out this way right across northern
21 Ontario.

22 MR. EDWARDS: Mr. Chairman, I'm going to
23 suggest that we break earlier than I expected. My
24 cross-examination was shorter than I thought it would
25 be and I think it would be an appropriate time to break

1 now, subject to the Board's direction.

2 THE CHAIRMAN: Okay. Do you anticipate
3 that you are going to finish substantially before three
4 o'clock on Wednesday?

5 MR. EDWARDS: I will be finished
6 substantially before three o'clock on Wednesday, yes.

7 THE CHAIRMAN: Will you be finished
8 tomorrow night?

9 MR. EDWARDS: There's a good chance I
10 could be.

11 THE CHAIRMAN: We were wondering -- like,
12 we would not want to lose the hours that would be
13 available on Wednesday. This has nothing to do with
14 the fact that you are going to finish early.

15 MR. EDWARDS: I won't --

16 THE CHAIRMAN: Don't get us wrong, we
17 don't want you to stretch it out just to fill in the
18 time, but we would like to perhaps at this point in
19 time, if there is a reasonable chance that you are in
20 fact going to finish, try and see if we can't
21 accommodate some other party for Wednesday, and I'm not
22 necessarily suggesting that it be Ms. Swenarchuk, who
23 will probably be more than just Wednesday.

24 MS. BLASTORAH: Mr. Chairman, my advice I
25 believe from Mr. Mander at the end of last week was

1 that Ms. Swenarchuk had indicated she will be one day.
2 I believe she was referring to the Monday which would
3 be a short day. Now, I don't know whether she meant by
4 that one short day.

5 THE CHAIRMAN: All right. Why don't we
6 do this: The Board will instruct Mr. Mander to contact
7 Ms. Swenarchuk and see if that is the case, perhaps she
8 could be ready to go early Wednesday morning. And if
9 we can finish her off on the Wednesday that would be
10 preferable; if not, we will attempt to arrange for
11 another party to take up that available hearing time
12 rather than waste Wednesday.

13 Perhaps we can have Mr. Mander contact
14 NAN and -- counsel for NAN as well as Treaty No. 3.

15 MS. BLASTORAH: I believe Treaty No. 3
16 had indicated they were not intending to cross-examine.

17 THE CHAIRMAN: Cross-examine on this
18 panel, okay.

19 MS. BLASTORAH: But there is Mr. Hanna as
20 well.

21 THE CHAIRMAN: Well, they have indicated
22 three days, so I'm not sure starting them on Wednesday
23 would do us much good in terms of allocating that time
24 efficiently. In any event, we will worry about that
25 and report back tomorrow. You are suggesting, Mr.

1 Edwards, we now break until 7:00 p.m.?

2 MR. EDWARDS: Yes, I am, Mr. Chairman,
3 and I think with a full day tomorrow I can be complete.

4 THE CHAIRMAN: The Board might consider
5 extending into the scoping session now, if it is not
6 going to prejudice any party that might have been
7 advised otherwise, and our problem is we have no way of
8 knowing what other party might be willing to -- might
9 have been intending to come at seven o'clock.

10 MR. FREIDIN: I would ask that we not
11 move into the scoping session now. I have not had an
12 opportunity to consult with certain people within the
13 Ministry in relation to the position we will be taking
14 on some issues. I was hoping to do that before seven.

15 THE CHAIRMAN: All right. Well, I think
16 under the circumstances then we will adjourn at this
17 point until seven o'clock and come back at that time.

18 Thank you.

19 ---Recess taken at 5:05 p.m.

20 ---On resuming at 7:10 p.m.

21 SCOPING SESSION

22 THE CHAIRMAN: Thank you, ladies and
23 gentlemen. Please be seated.

24 All right, ladies and gentlemen, we are
25 ready to begin the scoping session with respect to

1 Panel 15's evidence contained in the witness statements
2 and the attachments, and before we call on the parties
3 to give us their views the Board wishes to make a few
4 general comments applicable to this panel.

5 Firstly, I think as everyone is aware
6 from the preceding year or so of evidence, this is the
7 panel that was put forward on several occasions as
8 being the catch-all and the place where some of the
9 evidence previously covered was going to be dealt with
10 in more detail. It appears to the Board as being a
11 panel that brings together a lot of the previous
12 evidence that has been put before the Board and,
13 frankly, the Board would like to, in this instance,
14 commend the Ministry for a witness statement which we
15 feel is well organized and certainly accomplishes that
16 purpose.

17 Having said that, however, there are some
18 areas within this evidence that the Board is more
19 interested in than other areas and it doesn't
20 necessarily mean, subject to our further comments, that
21 the entirety of the evidence package has to be treated
22 in terms of direct evidence in the same way. We are
23 going to list for you some of the areas that we feel
24 have been covered in some detail before and,
25 accordingly, don't necessarily need as extensive a

1 treatment in this panel as some other areas and we have
2 divided this into basically four or five areas.

3 Firstly, we deal with the timber
4 management plan and the introduction to the timber
5 management planning process which are essentially
6 paragraphs 1 through 18 in the witness statement. This
7 provides background information and most of it we feel
8 we have dealt with before.

9 For example, paragraphs 8 and 16 deal with
10 data collection and values maps and this evidence was
11 covered in some detail in Panel 8. Similarly,
12 silvicultural groundrules and systems were covered in
13 Panel 10 in some detail.

14 Again, the calculation of MAD and the
15 whole area of the forest resources inventory was covered
16 in some detail by Dr. Osborn in Panel 3. Likewise,
17 areas of concern were covered basically in Panel 7, and
18 that is referred to in paragraph 13 of this witness
19 statement.

20 Paragraphs 14 and 16 deal with road
21 planning and construction and, of course, we are in the
22 middle of the cross-examination of Panel 14 which
23 covers that area in some detail.

24 Paragraph 15 deals with industrial
25 demand, mill demand and those areas were essentially

1 covered in Panels 4 and 5. And paragraph 17 deals with
2 forecasting both the harvest, renewal, maintenance and
3 wood dispositions, free to grow, that kind of thing,
4 and those were dealt with in earlier panels.

5 Those areas, the Board feels, do not have
6 to be covered in as much detail, we would suggest, as
7 the following group of paragraphs which are paragraphs 19
8 through 30.

9 Paragraphs 19 through 30 discusses the
10 review and approval process; that is, essentially
11 paragraphs 19 through 27, and the changes in that
12 approval process which are covered in paragraphs 27
13 through 30. The Board is, we would suggest so would
14 most of the parties, be interested in this area in
15 particular because we feel that this is essentially new
16 evidence over what we have heard before and is
17 certainly comprising an area of concern for the Board.

18 The whole area dealt with in those
19 paragraphs dealing with the amendment procedures, both
20 major amendments, minor amendments and bump-up
21 procedures, are again areas which we feel have not been
22 well covered to date in their entirety, although
23 certainly they have arisen in the course of the
24 evidence of previous panels.

25 The next area comprises paragraphs 32

1 through 40 and these deal with the development of the
2 work schedules. Again, the Board is interested in this
3 area and some of the detail hasn't been broken down
4 before in previous panels, but we have heard a good
5 deal of evidence concerning work schedules themselves.

6 Likewise, paragraphs 41 through 47 which
7 deal with essentially three areas: Herbicides, the use
8 of herbicides, prescribed burns, spraying and planning
9 access, these have been dealt with to a lesser or
10 greater extent in previous panels, but the area dealing
11 with those items such as the public involvement in the
12 selection of areas for spraying or prescribed burns or
13 access have not been dealt with to the extent that the
14 Board would like to see it dealt with and this is a
15 panel that covers off that area very well.

16 The same can be said for the various uses
17 and values and as well the participation and the notice
18 provisions that are given in terms of the planning
19 process. These are areas that we feel the proponent
20 and the other parties should be spending more of their
21 time because we feel that those items are brought
22 together in this panel to a much greater degree,
23 although many of the areas such as prescribed burning
24 and the use of herbicides have been covered before. We
25 are interested more in the planning aspects and the

1 public involvement aspects of those activities
2 vis-a-vis this panel.

3 The indication in the witness statement,
4 for example, of the Terrace Bay example, the Board
5 finds it interesting to see the actual example of a
6 timber management plan and the use of it as a
7 protection type of plan, but we have covered several
8 areas of that before, it has come up in a lot of the
9 evidence dealt with by previous panels. So, once
10 again, we are not sure that the parties have to spend a
11 great deal of time on the actual Terrace Bay plan as
12 it's presented, except insofar as other areas are dealt
13 with in that plan that haven't been previously covered.

14 The same comment can be essentially made
15 of the Red Lake timber management plan. Again, we have
16 seen parts of this plan brought out in the evidence in
17 previous panels and the Board isn't sure that it needs
18 a week's worth of evidence on that particular plan,
19 although it forms an example of what the planning
20 process comprises.

21 MR. FREIDIN: We are hopeful that the
22 whole panel will take no more than a week.

23 THE CHAIRMAN: Okay. Well, these
24 comments, Mr. Freidin, are as much for your benefit on
25 the part of MNR as they are for some of the other

1 parties as well in terms of their cross-examination.

2 Now, having said all of this, it is not
3 the Board's intention to unduly restrict any of the
4 parties in connection with the evidence to be given by
5 this panel. This panel was always put forward, as I
6 say at the beginning, as a panel that would pick up
7 some of the loose ends and, accordingly, the parties
8 will have a full and ample opportunity to deal with any
9 issues covered by this panel, but we feel that it is
10 certainly in the interest of everybody to indicate what
11 areas the Board considers to be relevant in terms of
12 where the time available should be spent and our
13 comments today are aimed at providing you with some of
14 that information.

15 So those are all we want to say by way of
16 preliminary comments and we would like to specifically
17 call upon the parties themselves to indicate whether or
18 not they have any additional areas that they can
19 foresee spending a good deal of time on.

20 We feel that the major area that this
21 panel will deal with that hasn't been well covered
22 before is the public participation aspect of the
23 planning process and how various choices are made and
24 what opportunities the public will have for meaningful
25 input into those choices.

1 Apart from that everything else is more
2 or less, in our view, a repeat of earlier evidence
3 although, as we mentioned at the outset, it is brought
4 together nicely in the one panel.

5 Okay. Having said that, I think we will
6 call upon some of the parties to indicate if there is
7 any other areas that they would like to bring to the
8 Board's attention in terms of this panel.

9 We will start with you, Mr. Cassidy.

10 MR. CASSIDY: I have nothing further to
11 add to your comments, Mr. Chairman. You seem to have
12 captured the essence of many of our concerns as
13 outlined in our statement of issues and we will be, in
14 our cross-examination in this matter, occasionally
15 referring back to some of the activities panels, as I
16 call them, to ask how they were dealt with in the
17 planning process, but most of those issues have already
18 been addressed by yourself.

19 THE CHAIRMAN: Okay. And there is no
20 problem with any of the parties referring back to the
21 evidence previously given in terms of the various
22 activities such as harvesting, renewal, et cetera.
23 What we are hoping we won't have to go into in this
24 panel is a further reiteration or re-explanation of
25 what those activities were. We really want to see how

1 those activities fit within the planning process itself
2 and what kind of public involvement is considered by
3 the planning process.

4 Mr. Edwards?

5 MR. EDWARDS: Thank you, Mr. Chairman.

6 Our statement of issues sets out our concerns. One
7 area that came up I think as a result of your comments
8 that has to do with the--

9 THE CHAIRMAN: Sorry?

10 MR. EDWARDS: --proposed planning process
11 with respect to access roads, so we have obviously
12 modified our Panel 14 cross-examination rather
13 extensively as a result of the MNR's suggestion that
14 the planning considerations as opposed to the how to
15 considerations were going to be lumped into Panel 15
16 and we very much wish to explore the planning process
17 as it relates to access roads.

18 So I will stand by my paragraph (c) which
19 sets out really some concerns with MNR paragraph 7 and
20 18. We intend to ask quite a few questions in that
21 area.

22 Other than that, I think we have
23 identified those things that we are concerned about in
24 our witness statement and we certainly hear what you
25 are saying about unnecessary repetition.

1 THE CHAIRMAN: Very well. And I think
2 this is the appropriate place to start dealing with
3 these planning considerations.

4 As long as we can sort of separate, as
5 you put it, the how to questions even when they deal
6 with road access to be dealt with by this panel to the
7 extent that you have already arranged your
8 cross-examination.

9 MR. EDWARDS: Well, certainly early on in
10 Panel 14 the MNR introduced a chart which set out the
11 areas that it thought really were appropriately to be
12 dealt with in Panel 15 and, as I recall, most of the
13 planning considerations were lumped into Panel 15.

14 So my forecast of the length of my
15 cross-examination on Panel 14 is dependent on the
16 theory that I will be cross-examining that area in
17 Panel 15.

18 THE CHAIRMAN: Thank you.

19 MR. CASSIDY: Mr. Chairman, just to
20 assist Mr. Edwards. I'm sure he has read all the
21 panels that are yet to come, but in respect of MNR's
22 Panel 16 I observed - and without making any comment
23 about the course of his cross-examination this
24 morning - that a number of those questions were related
25 to monitoring issues and I just might advise him that -

1 and I don't know whether it's Mr. Freidin's intention
2 or not - but it may speed the process up if some of
3 those monitoring type issues were dealt with in the
4 monitoring panel as well. I'm thinking in terms of
5 issues related to an enforcement program. I would
6 submit that that issue, it appears to me they will be
7 dealt with in Panel 16.

8 THE CHAIRMAN: Well, to the extent that
9 we can separate issues of that nature, I think that
10 comment is well founded. I think we are getting into
11 the area where some of these lines of demarcation are
12 somewhat blurred and it may not be efficient for the
13 parties to be able to separate them as neatly as we
14 would all like them to be separated.

15 But bearing that in mind, I think that we
16 can sort of leave Panel 15 for the planning aspects and
17 leave as much as possible of Panel 16 for the
18 monitoring aspects of the same material.

19 MR. FREIDIN: Just in relation to the
20 distinction between 14 and 15 in terms of the how to
21 versus the planning.

22 I'm sure Mr. Edwards and other parties
23 are aware that we don't have a Mr. Adamson on those
24 other panels, so if there are questions about how might
25 one be affected or maybe change their plans if they run

1 into a certain type of situation, construction related
2 or mitigation type related, Mr. Adamson should be asked
3 those questions because the Panel 15 people will be
4 more process oriented as opposed to: This is how we
5 would specifically deal with this specific kind of a
6 problem.

7 THE CHAIRMAN: Yes. And I think that is
8 a comment that all parties should take into account,
9 that we view Panel 15 as being a process oriented
10 panel: How do all of these questions we have dealt
11 with to date fit together in the planning process and
12 how does the public at large have input into that
13 process.

14 Very well. Mr. Quinney, or Dr. Quinney.

15 DR. QUINNEY: Thank you, Mr. Chairman.

16 We certainly agree with the Board that
17 Panel 15 is a process oriented panel. Our statement of
18 issues does clearly describe those areas and paragraphs
19 that we do wish to cross-examine on.

20 I would simply emphasize two things. You
21 have mentioned that paragraphs 1 through 18 in some
22 respects have already been covered in other panels. I
23 would simply mention here that we will have some
24 questions with reference to those paragraphs. We will,
25 however, strive to ensure that there is no repetition

1 whatsoever with reference to what has preceded us.

2 THE CHAIRMAN: Very well. Thank you.

3 We realize, and we are indicating up
4 front, that there will be some questions relating to
5 earlier panels because at the time some of those very
6 questions were put during the earlier panels there was
7 some assurance given that some of those questions would
8 be answered by Panel 15. So there is going to be a
9 back and forth to a certain extent but, again, if we
10 can all try to relate the questions on Panel 15 to
11 process issues as opposed to repeating the detailed
12 evidence given when the individual panel was called
13 earlier, I think we will speed things up considerably.

14 Ms. Palowski, do you have any...

15 MS. PALOWSKI: No, we have no comment,
16 thank you.

17 THE CHAIRMAN: Okay. And Ms. Seaborn?

18 MS. SEABORN: Thank you, Mr. Chairman.
19 Just two comments.

20 With respect to the Board's indication of
21 an interest to have parties focus on public
22 participation, I think you will see in our statement of
23 issues the numerous references referring back to the
24 different timber management activities to public
25 participation. That is certainly going to be one theme

1 of our cross-examination. The other area that we
2 intend to deal with is the area of bump-up which we
3 have identified as well.

4 And with respect to the earlier panels
5 that, as you said, tend to cover factual information
6 that we have heard about, our cross-examination on
7 those areas will be very product related in the sense
8 that what we are looking at is not what those
9 activities entail, but how it all comes together in a
10 timber management plan and an annual work schedule and
11 how planning decisions are documented in a typical
12 timber management plan.

13 The only new area that hasn't been
14 mentioned that we will have some questions on is the
15 extent to which, if any, there is a difference in a
16 product format between an FMA generated timber
17 management plan and a Crown timber management plan.
18 There have been discussions in the past about FMAs and
19 I believe that Mr. Freidin's position was that FMAs
20 would be dealt with in more detail in Panel 15. Again,
21 our theme on that will be product oriented rather than
22 what -- we are not going to be going back to what an
23 FMA agreement is.

24 THE CHAIRMAN: Right. Well that, Ms.
25 Seaborn, accords with the Board's view that it's really

1 pararaphs 19 through 30 of this witness statement that
2 appears to be the area that requires the most
3 elaboration in terms of it being somewhat new on the
4 overall process from what we have heard through past
5 panels.

6 Well, Mr. Freidin, do you have any
7 further comments?

8 MR. FREIDIN: The comments of the Board
9 are very helpful, Mr. Chairman, and I think I find it
10 somewhat gratifying. I think we were on the right
11 track in terms of discussions or preparation that we
12 have been involved in since writing the witness
13 statement. I believe, however, if I could direct the
14 Board, in particular the parties, to certain sections
15 or pararaphs of their statements of issue and indicate
16 questions or concerns that I have, it might be helpful.

17 For instance, I have taken the statements
18 of issue and I guess I have listed -- taken each
19 party's separately and I have listed things which I
20 think that the Board -- or I'm going to be vigilant and
21 I would hope that the Board would be vigilant in
22 ensuring that there is no repetition of evidence. So I
23 would like to go through some of those specific issues
24 and just make sure that I am on the right wave length
25 in terms of whether these are things that the Board

1 feels have been canvassed in some detail already.

2 And I have a number of items where we are
3 not too sure exactly what the issue is and I will deal
4 with those one at a time and, on those matters, I would
5 really be appreciative if I could get some
6 clarification or definition, refinement of the issues
7 because some of them are stated so broadly that it's
8 really not helpful in terms of us scoping the issue or
9 scoping the evidence. .

10 THE CHAIRMAN: Well, part of the reason
11 of the scoping session is to allow you to prepare for
12 the direct examination and to make it as relevant as
13 possible to what the concerns of the parties are. So
14 if you would put forward where you require
15 clarification, the Board will direct the party who
16 submitted the statement of issue to clarify it at this
17 point, if they can.

18 MR. FREIDIN: All right. Well, if I
19 could start then with the OFAH, keeping in mind your
20 comment about the paragraph that you felt there had
21 been some evidence to date, the first issue that is
22 raised in paragraph 2 sub A of their statement of issue
23 is minimum information requirements: What are they,
24 where are they specified, who is responsible for
25 meeting them and so on.

1 Minimum information, based on my
2 recollection of the evidence, is something which has
3 been canvassed in some detail. It has been dealt with
4 in terms of the guidelines -- the various provincial
5 guidelines in particular.

6 I am assuming from your comment, Mr.
7 Chairman, that that is an area which, because it was
8 dealt with both in Panel 7 on minimum information
9 requirements and dealt with in Panel 8 when we went
10 through guidelines, that is an area where you are not
11 looking too hear very much from the proponent and an
12 area where in fact cross-examination -- the people
13 cross-examining consider whether in fact they are
14 repeating themselves.

15 THE CHAIRMAN: I think in that area, Mr.
16 Freidin, we are more interested, and I would suggest
17 that maybe the parties are as well, as to what minimum
18 information is available to the public as opposed to
19 what minimum information the Ministry has in its
20 possession in order to formulate its decisions.

21 In this area we are dealing with the
22 planning process and part of the planning process is
23 obviously both public input and public review and I
24 think that those types of questions that we would
25 entertain for this panel are the ones dealing with the

1 minimum information available to the public.

2 MR. FREIDIN: That's helpful. Thank you.

3 THE CHAIRMAN: And I don't know, Dr.
4 Quinney, if that is the area you were getting into, but
5 as far as going back to deal with things like the
6 guidelines and the FRI and those types of blocks of
7 information that are available, the Board feels that
8 those have been covered adequately.

9 You may want to learn at this point that
10 what minimum information in terms of the planning
11 process is available to members of the public.

12 Well, let's hear what Dr. Quinney has to
13 say on that.

14 DR. QUINNEY: Mr. Chairman, I would
15 simply reiterate that again we hold the Board's view
16 that this is a process issue panel and, perhaps to save
17 the Board time, I would be happy to sit down with Mr.
18 Freidin and discuss some of these areas that he wishes
19 further clarification on.

20 MR. FREIDIN: Well, I think that I may
21 take Dr. Quinney up on that. I think it's still
22 helpful to go through this because the comments you
23 just made, Mr. Chairman, are helpful to me.

24 THE CHAIRMAN: I think it's worthwhile if
25 you go through it, if for no other reason it will give

1 you an appreciation of what the Board's thinking is
2 bearing in mind that the Board's thinking may not
3 always be in accord with what the parties are thinking.
4 But I think you have to take both into account.

5 MR. CASSIDY: It just seems to me, for
6 example, Mr. Chairman, that what your concern is, sir,
7 what information is available to the public is in fact
8 addressed in paragraph (c) of Dr. Quinney's statement
9 of issues where he talks about sufficient documentation
10 and, in the situation that he's in he appears to have,
11 in that paragraph, proposed the overall catch-all that
12 seems to be put into paragraph (a).

13 MR. FREIDIN: Mr. Chairman, I think that
14 was a comment, when you said available to the public
15 and I just made a comment to myself, part of the
16 evidence in terms of that issue I think -- well, part
17 of the response which will be made will deal with
18 traceability of decisions to the extent of course that
19 supplementary documentation, particularly in relation
20 to the area of concern planning process, documents the
21 decision and the rationale for the decision. And that,
22 of course, in my view would address to some extent
23 minimum information requirements as you have defined it
24 for the purposes of Panel 15.

25 THE CHAIRMAN: And again, we appreciate

1 what you have just said and we would again reiterate
2 that, in our view, Dr. Quinney, paragraph (b) of your
3 statement of issues has also been covered in our view
4 to some extent -- to a large extent by previous panels.

5 It's really paragraph (c) as Mr. Cassidy
6 has just indicated, that is the area that we think is
7 more relevant to the planning process per se. The
8 other areas we feel have been covered to a large extent
9 and we would not be looking for any kind of extensive
10 coverage of the items mentioned in paragraphs (a) and
11 (b).

12 MR. FREIDIN: If I might then, just sort
13 of following along from paragraph (c), Mr. Chairman,
14 you will note that -- I mean, I agree that the
15 traceability of decisions is an issue which has to be
16 addressed by Panel 15.

17 An area of some overlap again where I
18 would ask the Board for some direction. You will note
19 that the example in the third line of item (c) there is
20 reference to basically a member of -- you know, in
21 terms of traceability: Can a member of the public
22 review the balancing of costs and benefits with respect
23 to timber and non-timber values to arrive conclusively
24 at the final decision.

25 And if you go over to page 3 and you see

1 the reference to paragraph 15: What role does
2 optimization of net benefits play in the decision
3 process, how are non-timber benefits and costs
4 quantified and incorporated in net benefit analysis and
5 over what time horizons are benefits calculated.

6 THE CHAIRMAN: I'm not following where
7 you are.

8 MR. FREIDIN: Well, go to page 3 of the
9 statement of issues of OFAH in relation to paragraph
10 15, the third paragraph -- or the third item referred
11 to on page 3: What role does optimization of net
12 benefits play?

13 THE CHAIRMAN: I am sorry. Yes, okay.

14 MR. FREIDIN: All right. And you see
15 they go on, they speak about that, they raise this
16 issue of benefits and costs being quantified and being
17 incorporated in a net benefit analysis and they refer
18 to the time horizons.

19 With respect, if in fact they, OFAH, is
20 intending to in fact repeat the questions which, in my
21 respectful submission were made in three or four panels
22 about whether the Ministry does cost benefit analysis
23 and why doesn't it, and what does it do if it doesn't
24 it. That, in my respectful submission, is something
25 which has been canvassed to some great degree and I

1 think Mr. Clark's evidence is the Ministry's decision.
2 I don't think this panel can add anything to what Mr.
3 Clark and others have said in the precedings panel
4 so...

5 THE CHAIRMAN: Well, I think the Board
6 wants to make a general comment on that and that is
7 simply, Dr. Quinney: The quantification issue, as you
8 are aware from your client's participation in this
9 hearing, has been a major issue throughout many of the
10 panels. We have the Ministry's position, we feel, on
11 what is quantifiable in terms of their planning process
12 and what is not.

13 Your client may disagree totally with the
14 approach taken by the Ministry but, nevertheless, the
15 Ministry's position is on the record. We would not be
16 disposed towards entertaining a long line of
17 questioning along that area since we feel we have the
18 Ministry's position. You may, on the other hand
19 however, wish to adduce evidence during your own case
20 to indicate why the Ministry should or should not be
21 quantifying many of their decisions.

22 I would suggest to you that that is a
23 place for your client to adduce evidence and contrast
24 the Ministry's position which we feel we have on the
25 record. It will be up for the Board to determine at

1 the end of the case whether or not your client's
2 position, if they take a position such as that, is the
3 more preferable one or whether the Ministry's position
4 as they have stated on the record is more preferable.

5 But it doesn't do us any good at this
6 stage of the game to go through whether or not some of
7 these decisions are quantifiable or not. We think that
8 that issue has been covered as entirely or extensively
9 as it can be at this point vis-a-vis the Ministry's
10 position. The rest of the chapter on that question, in
11 the Board's view, is up to you to adduce evidence on
12 that question yourself.

13 MR. CASSIDY: Perhaps just to assist -
14 I'm not going to stand up every time I jump in, Mr.
15 Chairman, given the informality I assume exists in
16 these scoping sessions - but just to assist Dr.
17 Quinney, as I understand, a large part of Dr. Dean
18 Baskerville's evidence may deal with that whole issue
19 since that was raised on several occasions.

20 THE CHAIRMAN: It may well and I'm sure
21 the question of quantification will be dealt with when
22 Dean Baskerville is called, but that doesn't preclude
23 any other parties, including Dr. Quinney's client, to
24 call evidence of their own as to the desirability of
25 quantification in some of these decisions.

1 I think, Mr. Freidin, your position is
2 whatever the Ministry does in that regard is clearly on
3 the record at this point in time and need not not be
4 repeated.

5 MR. FREIDIN: Right. In general terms, I
6 would agree with you. I think there may be some brief
7 evidence even in direct when we go through portions of
8 the Red Lake plan that says: Now, here's an objective
9 where there's -- you know, it's quantified, it's a
10 target and that sort of thing.

11 THE CHAIRMAN: And there is the area of
12 concern planning process which may also encompass--

13 MR. FREIDIN: Sure.

14 THE CHAIRMAN: --some areas of that. But
15 to the extent that we have heard your position on
16 quantification in the other panels, I don't think it
17 has to be repeated here.

18 MR. FREIDIN: Okay. Another area then,
19 if I just might --

20 MRS. KOVEN: Excuse me, Mr. Freidin.

21 MR. FREIDIN: Sorry.

22 MRS. KOVEN: I was going to say as well,
23 in terms of this 2(c) we were talking -- you suggested
24 that that question has to do with quantification, the
25 traceability of decisions issue.

1 MR. FREIDIN: Not necessarily.

2 MRS. KOVEN: Setting aside the
3 quantification issue, I think there is a valid point in
4 the question and; that is: Does a member of the public
5 have any hope in hell of understanding at the end of
6 the day how the Ministry has made a decision and I
7 think you are addressing that in Panel 15.

8 MR. FREIDIN: I think that is a key
9 decision and I think that the OFAH perhaps can take
10 credit for coining the word, if it wasn't a word
11 before, in relation to these sorts of matters of
12 traceability and we intend to deal with that head on.

13 MRS. KOVEN: Mm-hmm.

14 THE CHAIRMAN: Very well. Any other
15 areas with regard to this statement of issue?

16 MR. FREIDIN: Yes. Again, you may be of
17 some assistance. Staying on page 3, the very first
18 references to paragraph 13 and 16 you will note that
19 one of the questions -- the second question which
20 begins on the second line: Is the area of concern
21 planning process amenable to the HSA which is habitat
22 supply analysis, I assume, planning approach.

23 Now, I think that perhaps is a valid
24 question but should be approached both in direct if we
25 intend to deal with it that way, or in

1 cross-examination with a full understanding of the
2 detailed evidence regarding habitat supply analysis
3 which has been heard to date, particularly the evidence
4 of Dr. Euler in Panel No. 10 who indicated that the
5 approach is understood and who indicated how it is
6 regarded by the Ministry and the Ministry's view of it,
7 including Dean Baskerville's comments on it, and where
8 in fact the Ministry is going in its present view on
9 that.

10 There is no change in that position since
11 the evidence of Dr. Euler and others on that matter, so
12 again I think the question as posed is a little
13 different than just saying: Are you going to do
14 habitat supply analysis. It may be a question which is
15 perhaps future oriented in saying: If in fact you move
16 and you do habitat supply analysis, are you going to
17 have to change your area of concern planning process.

18 That's a different question and if that
19 is where it's going, I will consider that position at
20 that time, but I just don't want to get into a repeat
21 of that: Don't you think habitat supply analysis is
22 where you should go and -- do you understand?

23 THE CHAIRMAN: Again, Dr. Quinney, the
24 Board feels it has the Ministry's position on where
25 they are at this point in time in habitat supply

1 analysis. I think we should take Mr. Freidin's
2 comments that if the Ministry moves towards that
3 approach at a future date, how does it affect the
4 planning process that they are putting forward for
5 approval, in this case the area of concern planning
6 process.

7 MR. FREIDIN: And I would have to think
8 about how hypothetical that was and how much detail
9 that we would be able to provide on that. But, again,
10 your direction is of assistance, Mr. Chairman.

11 THE CHAIRMAN: Okay.

12 MR. FREIDIN: If I could go to paragraph
13 4 now. This goes back to page 2, dealing with the old
14 system and the new system. Mr. Chairman, page 2 of
15 their entire statement of issues, you see that...

16 THE CHAIRMAN: I have got it as page 4.
17 Is it under additional issues?

18 MR. FREIDIN: No, no.

19 THE CHAIRMAN: Sorry.

20 MR. FREIDIN: Go back, it's paragraph 4.
21 It refers to paragraph 4 as the heading.

22 THE CHAIRMAN: Oh, I see. Okay, on page
23 2, right.

24 MR. FREIDIN: When I say paragraph 4 I'm
25 just referring to the headings that OFAH has used. How

1 specifically do the old and the new systems differ. I
2 would just like to advise the Board and the parties
3 that this is something which we intend to deal with in
4 direct evidence. I think it was a matter that you
5 yourself raised, Mr. Chairman.

6 I would like to indicate, however, that
7 it's Ministry's intention to deal primarily with
8 changes which have occurred between the 1985 process,
9 the one which was actually proposed in the original
10 Environmental Assessment Document filed in December of
11 '85, and the process as it is now.

12 There have been a number of changes and
13 developments over that time, you will hear why those
14 have occurred or what they are, and I will be
15 specifically asking people like Mr. Kennedy and Mr.
16 Bisschop why the change, hopefully as a means to
17 indicate to you that the intent or the thrust of that
18 particular part of process.

19 We are in a very general way going to
20 deal with the pre-1985 changes but I would indicate
21 that we don't intend to deal with it in much detail and
22 I'm looking for some direction from you, Mr. Chairman,
23 if that is appropriate because, in my view, in evidence
24 Panel No. 3 you will recall that Mr. Osborn talked
25 about the '78 manual, the 1984's management agreement

1 manual and the change and incorporation of those into
2 one manual in 1985.

3 So I don't want to repeat that and when
4 we dealt with those manuals, of course, we dealt with
5 how they were different in terms of things such as
6 annual allowable cut versus maximum allowable depletion
7 and those sorts of things, as well, in Panel No. 1 Mr.
8 Douglas and Mr. Monzon who gave that general outline of
9 the Ministry and the Ministry's approach --

10 THE CHAIRMAN: Sorry, Mr. Freidin.

11 MR. FREIDIN: Fine. In Panel No. 1 Mr.
12 Douglas and Mr. Monzon dealt with the Ministry's
13 administrative set-up and basically spent a
14 considerable amount of time, I think, documenting the
15 developments starting right back in the 70s with land
16 use planning and how public involvement was brought in
17 there, how the framework for resource management
18 planning, which is the document Mr. Douglas spoke at in
19 some length which says governs how you approach
20 resource management planning regardless of which
21 resource you are dealing with, and how public
22 participation came into that.

23 Now, I don't want to go back and repeat
24 that. That is not to say that I haven't heard what you
25 said about how do the public actually fit into this

1 planning process, but I would just like some comment, I
2 guess confirmation hopefully, that the approach we are
3 taking of not going back before 1985 in much detail but
4 emphasizing changes since '85 is an appropriate
5 direction.

6 THE CHAIRMAN: Well, I think to start
7 with it would be helpful to the Board, and I would
8 suggest all of the parties, to have a clear
9 understanding of what exactly is the planning process
10 that you are putting forward to the Board for approval.
11 In other words, it's made up of components obviously
12 that existed before '85, during the '85 exercise with
13 the planning manual and any modifications you have made
14 since then in terms of the planning process and I'm
15 sure that many will be unclear as to what, at this
16 point in time, are we being asked to consider and/or
17 approve and what ramifications does the process that
18 you are putting forward have vis-a-vis any of the
19 parties involved in the hearing.

20 So somewhere you have got to bring it
21 together and indicate to us clearly: This is what we
22 are asking for. It may have paralleled what came
23 before, but here's where the areas of change are and
24 here is the bottom line, here's the product that we are
25 putting forward to you for consideration.

1 MR. FREIDIN: All right. I think I can
2 respond to that and perhaps be helpful to the Board and
3 the parties right now. And that is to indicate that
4 the process which is being put forward for I guess
5 review, consideration by the Board is the process which
6 is outlined in the Environmental Assessment Document,
7 the format and content requirements which show up in
8 the timber management planning manual.

9 Now, that -- anything that came before
10 that, although it may have had an effect on what is in
11 that process which I have just described, was just
12 that, it influenced to some degree what went in there.
13 So I think a discussion in some respects -- a
14 discussion of what preceded that 1985 document would be
15 confusing as opposed to helpful because the process
16 which is being put forward is the process in the '85
17 Environmental Assessment as amended in 1987, so we have
18 to deal with the changes, and the format and content
19 requirements, basically the product of that process as
20 set out in the timber management planning manuals.

21 THE CHAIRMAN: Plus, would you not
22 suggest as well as what amendments you may be
23 suggesting to the process as a result of this hearing
24 itself?

25 MR. FREIDIN: That's correct, and I think

1 you have got those probably in our terms and
2 conditions. So to some extent we may be referring to
3 those as we go along, but...

4 THE CHAIRMAN: Mr. Freidin, you might
5 consider - and we just throw this out as a suggestion
6 and I don't know how easy or how difficult it is - but
7 you might go to your planners and find out and; that
8 is--

9 MR. FREIDIN: It won't be easy.

10 THE CHAIRMAN: --some kind of schematic,
11 if it could be produced, to deal with what the process
12 was pre-85 and what you have got now.

13 MR. FREIDIN: We have considered using a
14 schematic and I have spoken to people who are going to
15 be witnesses. We hope to be able to put something
16 together like that. I think that...

17 THE CHAIRMAN: And that will at least
18 point out to us right off the bat, looking at
19 something, where some of the major differences are and
20 that can be embellished of course by the evidence that
21 is before us in terms of the EA and any of the
22 amendments that have come since that time.

23 MR. FREIDIN: All right. I just caution
24 that I hear you, that I will -- we will attempt to go
25 that pre-85 and look at how we can deal with that, but

1 in a way which won't be confusing because I really do
2 believe that what was pre-85 is incorporated -- the
3 good parts of that are taken up and have been repeated,
4 changes been made in the '85 and there is really not a
5 heck of a lot that's -- well, there may be new things.

6 THE CHAIRMAN: Well, with the exception,
7 Mr. Freidin, that not everyone may agree that all the
8 good parts have been saved and the bad parts chucked.
9 There may be some that feel that something from an
10 existing previous process prior to '85 should also be
11 retained that you may have left out of your present
12 plan.

13 MR. FREIDIN: You don't want me to
14 highlight the good parts that have been chucked; do
15 you?

16 THE CHAIRMAN: No.

17 MR. FREIDIN: Good. In relation to --
18 sticking with Panel No. 1 for a moment, we have -- if
19 you could turn to page No. 4 of OFAH's statement of
20 issues I would ask for some direction again from the
21 Board. Additional issue number (a): How are district
22 land use guidelines' targets incorporated in timber
23 management plans.

24 I believe the Board, and Mr. Martel more
25 perhaps than others, will remember the great length at

1 which we dealt with this issue particularly in Panel
2 No. 1 with Mr. Douglas and Mr. Monzon. It was also
3 dealt with in Panel No. 7.

4 If I could just make this general comment
5 referring to non-timber targets which may exist in
6 district land use guidelines, in my respectful
7 submission, that gets us right back into the forest
8 management versus timber management debate and, in my
9 submission, that is a debate which has ended.

10 In terms of timber targets the evidence
11 quite clearly given in Panel 1, and I think again in
12 Panel No. 7, was that the targets in the district land
13 use guidelines in terms of production targets for
14 timber were the basis on which one would assess what
15 the district is doing, but in terms of timber
16 management planning at the management unit level, it
17 did not govern or affect the planning which took place,
18 to the extent that wood produced on a management unit
19 contributed to that target.

20 Well so be it, and that's how you look at
21 the management units collectively to see how they were
22 all contributing to that target and you would know
23 whether the target was being achieved or, if you
24 weren't, you have to consider whether you have to
25 adjust your target or make some different strategy.

1 Again, with respect, I think that has
2 been canvassed at some length and we would like the
3 Board's direction on that one too.

4 THE CHAIRMAN: Well, Dr. Quinney, what
5 area were you going to embark upon in terms of
6 non-timber values or resources in terms of the district
7 land use guidelines, bearing in mind that the way they
8 have been used and described in this hearing have
9 related primarily to timber values.

10 DR. QUINNEY: Well, they have, Mr.
11 Chairman, but we have also heard MNR evidence telling
12 us that, for example, there are provincial objectives
13 with reference to moose targets. So we would be most
14 interested, again, with reference to the planning
15 process as an example, how are those provincial moose
16 targets incorporated through the DLUGS into the TMPs,
17 as an example, is the area that we will be asking
18 questions.

19 MR. FREIDIN: Well, with respect, I don't
20 want to repeat the evidence of Dr. Euler in Panel No.
21 10 and Mr. Hogg in Panel No. 11.

22 Oh, by the way, I might as well mention
23 at this juncture that the Ministry intends to add a
24 witness to Panel No. 15 and we have done it because
25 there have been a number of questions about wildlife

1 matters, both interrogatories and statements of issues,
2 and we intend to put John McNicol on the panel to be of
3 assistance to the parties and to the Board, if in fact
4 these -- because there are questions in relation to
5 wildlife concerns, fish and wildlife concerns which I
6 think are appropriately raised in this panel, and we
7 didn't want to leave the parties and the Board sort of
8 without the expertise of someone like Mr. McNicol.

9 But having said that, in my respectful
10 submission, provincial targets and how they in fact are
11 incorporated I believe has been dealt with. Mr.
12 McNicol's evidence is not intended to go beyond what is
13 in the witness statement. I can tell you that part of
14 his evidence will deal with how -- you recall in Panel
15 No. 7 he indicated his view of the timber management
16 planning process as a vehicle to address wildlife
17 concerns. While I'm going to ask him how does he
18 actually go about doing that within this process and he
19 will explain how he does that, but that is something
20 that I believe he can do without going into any
21 detailed direct evidence or any detailed
22 cross-examination on...

23 THE CHAIRMAN: Well, I think the
24 questions, Dr. Quinney, regarding the moose habitat
25 guidelines and those kind of provincial targets would

1 have to be dealt with as to how those targets fit into
2 the timber management planning process, per se, without
3 going back and, in any way, covering the details
4 concerning the moose habitat guidelines or how they are
5 used as a wildlife management vehicle.

6 It's just the area as to how those
7 guidelines and others, fish guidelines, et cetera are
8 integrated into the planning process with regards to a
9 specific timber management plan. I think that is the
10 only area that we can in any way canvass, Mr. Freidin,
11 through this panel without repeating a great deal of
12 evidence that we have heard before.

13 MR. FREIDIN: Thank you.

14 THE CHAIRMAN: Dr. Quinney, do you have
15 anything further to add there?

16 DR. QUINNEY: Just this, Mr. Chairman:
17 That we did not perhaps mean to confuse matters by
18 talking about provincial targets. We know, for
19 example, taking the DLUGS as an example, there are
20 non-timber targets and we are interested again in how
21 those non-timber targets are or can be incorporated
22 into TMPs. I will also say again...

23 THE CHAIRMAN: What consideration is
24 given to these non-timber targets in the formulation of
25 a timber management plan?

1 DR. QUINNEY: Correct.

2 MR. CASSIDY: That evidence was in Panel
3 7.

4 MR. FREIDIN: The evidence, Mr. Chairman,
5 which I think was quite clear, that the objectives of
6 non-timber resource based plans come into play in the
7 timber management planning process and this is Panel,
8 maybe even 1, but 7 in particular and in 10 again, by
9 having representatives on that particular planning team
10 who come from those particular programs.

11 THE CHAIRMAN: And the integrated
12 resource management concept; is that not correct?

13 MR. FREIDIN: Right. That we don't
14 have -- the Ministry's view is that it does not put in
15 timber management plans objectives for non-timber
16 values; it's not a fisheries management plan, it's not
17 a wildlife management plan and, therefore, you don't
18 see a lot in there about how you go about achieving
19 those objectives.

20 That doesn't mean that those other
21 programs are not considered and accommodated in that
22 planning process. You have heard some of that to date.
23 I intend to expand in that aspect with Mr. McNicol to
24 give you a full appreciation of exactly what someone
25 like he actually does within that process.

1 THE CHAIRMAN: Okay. Beyond that, Dr.
2 Quinney, I don't think it would be advantageous use of
3 the Board's time to explore in any more detail what was
4 covered in Panel 7 primarily.

5 DR. QUINNEY: Well, Mr. Chairman, I'm
6 highly cognizant of the Board's desire to avoid
7 repetition and I'm listening very closely again for the
8 Board's guidance as to what constitutes a repetition,
9 but I do -- with reference to some of the things Mr.
10 Freidin has said, I do remain very concerned that we
11 would be limited in some areas of our
12 cross-examination.

13 THE CHAIRMAN: No. You can put the
14 questions to the witness and Mr. McNicol, in terms of
15 wildlife management, will be on the panel we are so
16 advised, but to the extent that his answer repeats what
17 has already been covered in Panels 1 and 7 on that
18 question, for example, we won't permit it to be gone
19 into again.

20 To the extent that his answer expands
21 upon that earlier evidence or modifies it in some way,
22 that is fair game.

23 DR. QUINNEY: Sounds most reasonable.

24 MR. FREIDIN: Mr. Chairman, I appreciate
25 the difficulty, you know, drawing a line all the time,

1 which is not to say these subject matters are taboo or
2 anything, but I think this falls under my category of
3 vigilant and I intend to be vigilant in terms of
4 listening.

5 THE CHAIRMAN: Well, we intend to be
6 vigilant but also fair.

7 MR. FREIDIN: As do I, Mr. Chairman.
8 Forests for Tomorrow, is anybody here?

9 MR. CASSIDY: I don't think so.

10 MR. FREIDIN: Notwithstanding that, Mr.
11 Chairman, I would like to deal with it and perhaps by
12 way of the transcript you can be of some assistance to
13 me and perhaps more directly to counsel for Forests for
14 Tomorrow.

15 Do you have that, Mr. Chairman?

16 THE CHAIRMAN: Yes.

17 MR. FREIDIN: It's the letter of August
18 the 8th, 1989. If we look near the bottom of the page,
19 reference to paragraph 11: Factors considered in
20 developing silvicultural groundrules. I interpret your
21 earlier comments, Mr. Chairman, as basically indicating
22 that that is evidence which you believe you have heard
23 ample evidence on, again, through all the panels, I
24 guess 7 through 12 and 13, particularly Mr. Hyunard.

25 THE CHAIRMAN: Well, it's hard to tell

1 what Forests for Tomorrow or their counsel meant by
2 that particular question. Certainly we have heard, we
3 think in ample fashion, description of the various
4 silvicultural groundrules and the silvicultural
5 practices employed by the Ministry. We certainly
6 wouldn't want to get into that again.

7 If what is meant, the factors considered
8 in developing those groundrules vis-a-vis the plan and
9 how they are incorporated into a timber management plan
10 per se, perhaps that is an area that might be worthy of
11 some time. We don't know.

12 MR. FREIDIN: I can indicate now that Mr.
13 Multimaki will be looking at the silvicultural
14 groundrules in the Red Lake plan. He will not go
15 through them one by one, but he will choose a certain
16 area and indicate to you how to read it and basically
17 indicate --

18 THE CHAIRMAN: How it's taken into
19 account by the plan.

20 MR. FREIDIN: How it's taken into account
21 and how we developed it.

22 THE CHAIRMAN: Right. And I think that
23 is probably as far as Ms. Swenarchuk probably wanted to
24 go in any event.

25 MR. FREIDIN: Well, the comment that you

1 made that it's difficult to tell is one -- is a
2 conclusion that I came to when I looked at paragraph
3 No. 11 reference, it's a conclusion I came to when I
4 looked at most of Forests for Tomorrow's. Perhaps out
5 of frustration I say it's not an uncommon reaction that
6 I have had to the statements of issues filed by Forests
7 for Tomorrow and I'm going to ask Ms. Swenarchuk what
8 she does mean and I assume that that is not -- wouldn't
9 be looked upon as being an unreasonable request.

10 THE CHAIRMAN: Well, I think to the
11 extent that you, on behalf of MNR, can discuss with any
12 of the parties prior to the actual presentation of
13 Panel 15 what is meant and what areas you would like
14 clarified would assist the hearing process in general.

15 If there is areas of disagreement we will
16 have to, of course, deal with them at the time that we
17 deal with the evidence or if it's a matter of some
18 concern perhaps even earlier than that so that it would
19 assist the parties in indicating what has to be
20 prepared for.

21 MR. FREIDIN: In relation to paragraph
22 No. 12 then, Mr. Chairman, methodology and databases
23 used in determining volume estimations. I think I know
24 what is being referred to and on the assumption -- let
25 me just tell you what I think is meant by that and I

1 would like some direction from you.

2 THE CHAIRMAN: We may have to call Ms.
3 Swenarchuk as the Board's witness.

4 MR. FREIDIN: Well, no, I don't think we
5 want to do that. If I might, it's my view - and
6 assuming that my view is correct I would like some
7 direction - methodology and databases used in
8 determining volume estimations, it would appear from
9 the materials or some of the interrogatories which have
10 been asked, we are getting back into evidence which was
11 dealt with in Panel No. 3 primarily and that is the
12 area/volume relationships.

13 THE CHAIRMAN: By Dr. Osborn.

14 MR. FREIDIN: By Dr. Osborn. We have
15 heard the evidence that the Ministry's view or approach
16 in terms of yield regulation is on an area basis, we
17 have reviewed comments by Dean Baskerville on that as
18 we find it in his audit report. Dr. Osborn indicated
19 how those volume estimates are made, things which are
20 considered, not considered and, I must admit, most of
21 that evidence was on cross-examination or a lot of it
22 was.

23 I would like some direction as to whether
24 that is an area, the area/volume relationship, which
25 again I'm not saying has nothing to do with Panel 15,

1 but is one of those areas which you believe has been
2 dealt with and is not one which you believe requires a
3 lot of attention, particularly perhaps by the
4 proponent.

5 THE CHAIRMAN: Well, certainly it's an
6 area that we dealt with at some length. That was one
7 of the lengthier panels. By the same token, if parties
8 disagree with the Ministry's approach, they have the
9 opportunity to adduce a different approach during their
10 presentation of their own evidence.

11 MR. FREIDIN: Oh definitely.

12 THE CHAIRMAN: If your position is
13 basically that the Ministry's position is as stated by
14 Dr. Osborn as an example in Panel 3 then -- and that is
15 clearly on the record and we are not dealing with
16 anything else, then the Board's tendency would be: We
17 are not going to repeat that. We have the Ministry's
18 position and the parties may disagree with the
19 Ministry's position, but that is a factual thing.

20 MR. FREIDIN: Okay.

21 THE CHAIRMAN: But we really don't know
22 what she means by this, so we will have to really
23 ascertain when she is next around perhaps.

24 MR. FREIDIN: Paragraph 13, methodology
25 and databases for identification of areas of concern.

1 I just perhaps, through the transcript, would indicate
2 to Ms. Swenarchuk that it's the Ministry's view that
3 the databases that the Ministry has at its disposal in
4 relation to both timber and non-timber values has been
5 dealt with at length in Panel No. 7, has been referred
6 to in the other panels, and I intend to take that
7 position should we try to get back into that area.

8 I have to try to perhaps move a little
9 more quickly here.

10 I guess I will just indicate to the Board
11 that I need, and I'm going to ask for some
12 clarification again, if not directly through the
13 transcript, of Ms. Swenarchuk as to: Could she give
14 some definition of refinement of the issues in
15 paragraphs 18 and 25 which is of interest to the Board,
16 the use of public input and information.

17 Again, that is very general. It would be
18 helpful for the purposes of scoping the issue if I knew
19 in a little clearer fashion what it was was of concern.

20 THE CHAIRMAN: I think you should confer
21 with her on that, but it certainly is an area that the
22 Board is interested in with respect to this panel.

23 MR. FREIDIN: Paragraph 27, criteria and
24 use of bump-up.

25 THE CHAIRMAN: Same comment.

1 MR. FREIDIN: Same. That was an area
2 which was referred to by Ms. Seaborn. I can understand
3 it being of interest to Ms. Seaborn seeing it's her
4 client who has the ultimate decision on bump-up
5 requests. She may be able to help me.

6 THE CHAIRMAN: The public itself may be
7 interested in where they have the ability to request a
8 bump-up, though?

9 MR. FREIDIN: That's correct. And I
10 think the same thing for contingencies, contingency
11 plans. I'm not too sure exactly, if there's some
12 specific issue.

13 All right. So I can just move on. In
14 relation to Nishnawbe-Aski Nation, the only comment
15 that I'm going to make, I don't think it will be
16 helpful for me to take it paragraph by paragraph. The
17 issues are all addressed the same way, that certain
18 things are not taken into account and without details,
19 the statement of issues really is not very helpful to
20 the Ministry in terms of scoping the evidence.

21 We will attempt to address that. I think
22 we have in fact dealt with that sort of question on
23 many occasions starting back with Mr. Monzon in Panel
24 No. 1. Again, to the extent that they can clarify what
25 it is that they believe is required, maybe we can

1 address it. Without that sort of clarification, we are
2 just shooting in the dark.

3 NOTOA, I don't have to make any comments.
4 I think we dealt with the 14 and 15 connection.

5 Treaty No. 3 just two issues which were
6 referred to; background information on natives, how
7 input is sought from natives. Now, I think we dealt
8 with background information on natives, I think in
9 detail, and we don't intend to lead any further
10 evidence on that, unless the Board feels that somehow
11 there is something that you wish us to address.

12 How input is sought from natives has been
13 dealt with, it's going to come up again in the
14 evidence, I think to a large extent by way of summary
15 and pulling together some of the evidence which has
16 been put forward.

17 THE CHAIRMAN: Well again, that all fits
18 into essentially public input.

19 MR. FREIDIN: Right.

20 THE CHAIRMAN: The natives being one
21 aspect of that native input. So I think this is a
22 relevant area for you to deal with during this panel.

23 MR. FREIDIN: Two last matters -- there
24 is three. Firstly, the time for direct evidence which
25 people may be interested in. I think with the Board's

1 comments, it's still the Ministry's hope that we will
2 be able to put this panel in in one week.

3 I'm going to leave -- well, the next
4 matter that the Board could be of some assistance and;
5 that is, if some of the parties are planning to
6 cross-examine on specific incidents that they are aware
7 of and being fully cognizant of how counsel like to
8 surprise the witness, it would be I think helpful to
9 the Board and to the panels if in fact the witnesses
10 are able to answer questions which are of interest to
11 other parties about specific incidents, and for that
12 reason I would just ask for some comment from the Board
13 in that regard.

14 THE CHAIRMAN: I think, Mr. Freidin, this
15 was the subject of some consideration by the Board at
16 an earlier time to the extent that if incidents
17 regarding specific companies, for instance the
18 industry, or specific other groups such as a particular
19 native band, or where a specific incident is going to
20 be detailed, that the parties who are going to be asked
21 to respond to those questions should be advised in
22 advance as to what areas are going to be canvassed and
23 for what purpose so that they can at least apprise
24 themselves of some detail concerning those specific
25 incidents.

1 To the extent that this panel will be
2 dealing with specific incidents at all, again remains
3 the subject I guess of some conjecture because it may
4 not fit into this panel, per se.

5 MR. FREIDIN: Well, yes. I mean, I don't
6 know, I can't put myself in the shoes of counsel for
7 other parties, but it has occurred in the past where
8 specific matters have been raised, specific situations
9 for instance and I don't know how frequent that is
10 going to be, but all I'm saying is that...

11 THE CHAIRMAN: Well, you are going to
12 have certain witnesses up here. If they are asked a
13 question about a specific incident they can either
14 answer it or not answer it, in terms of what their
15 knowledge is.

16 MR. FREIDIN: I guess my concern goes a
17 little further than that. I guess my concern goes to
18 the next question from the examiner, says: Well, will
19 you give us an undertaking in relation to that. That
20 is my real concern. We could be undertaken to death.

21 If in fact people are going to pepper the
22 witnesses with situations of which they have no
23 personal knowledge but are important to the person
24 asking the question and they say: Well, will you get
25 that information. Now, I think -- maybe we will have

1 to deal with it as we go along, but these are obviously
2 the kinds of questions which --

3 THE CHAIRMAN: Well, it's hard to deal
4 with in the abstract, but certainly it would be the
5 Board's view that if parties know that they are going
6 to be questioning this panel, or for that matter any
7 other panel, on a specific incident, it doesn't do
8 anybody any good, least of all the Board, to surprise
9 the panel without any prior knowledge.

10 And if they are going to be asking for an
11 undertaking, then perhaps they can advise you in
12 advance so that the witnesses can prepare themselves or
13 you can at least be in a position to take a definitive
14 position on whether or not you should be ordered to
15 produce certain information.

16 MR. FREIDIN: Right. And in that regard
17 the panel -- I guess the way we are projecting now
18 would start on August -- pardon me, September the 18th,
19 that is two and a half weeks approximately from now.
20 That information should it be forthcoming, would be
21 most useful yesterday.

22 THE CHAIRMAN: Well, and having said all
23 of that, Mr. Freidin, as you well know from
24 cross-examining, some questions flow from answers to
25 other questions. It may not be in the party's power to

1 anticipate what some of those answers are going to be
2 and, hence, their next question.

3 MR. FREIDIN: That is fair.

4 THE CHAIRMAN: So we will have to play it
5 by ear to some extent.

6 MR. FREIDIN: Sure. And the last matter
7 I would like addressed is, to the best of their
8 abilities, I would like to get some estimation of the
9 length of time that the various parties intend to be in
10 cross-examination.

11 Mr. Martel, did you have...?

12 MR. MARTEL: No.

13 THE CHAIRMAN: Well, we can attempt to
14 find out.

15 Mr. Cassidy?

16 MR. CASSIDY: I thought he was asking Mr.
17 Martel for his estimate of how long.

18 MR. FREIDIN: Well, I know what he would
19 say.

20 MR. CASSIDY: Without speaking at any
21 length to Mr. Cosman who would be here on this panel I
22 would say half a day to a day and leave it at that.

23 THE CHAIRMAN: Mr. Edwards?

24 MR. EDWARDS: Two to three days, Mr.
25 Chairman.

1 THE CHAIRMAN: Ms. Palowski?

2 MS. PAWLOSKI: One to two days.

3 THE CHAIRMAN: Ms. Seaborn?

4 MS. SEABORN: Two days, Mr. Chairman. A
5 very preliminary estimate.

6 THE CHAIRMAN: Dr. Quinney?

7 DR. QUINNEY: Mr. Chairman, I can only
8 perhaps speculate. Tentative estimate, five days.

9 THE CHAIRMAN: Well, the five days is
10 almost double the next nearest estimate that we have
11 received to date, although we haven't got Forests for
12 Tomorrow's estimate in either nor Treaty 3.

13 So I guess the Board would just request
14 at this time that you take into account all of the
15 comments which arose as a result of this scoping
16 session so that perhaps that five-day estimate might be
17 overly optimistic.

18 MR. CASSIDY: Pessimistic.

19 THE CHAIRMAN: Pessimistic, sorry, and
20 that perhaps the five days will not work out to be five
21 days.

22 However, as I mentioned at the outset, we
23 are not going to unduly restrict the parties from
24 examining and cross-examining in this panel but we are
25 going to maintain some vigilance with respect to

1 repetition.

2 And I guess, Mr. Freidin, we will have to
3 await an estimate from the other two parties.

4 MR. FREIDIN: Yes. We will either
5 contact them or ask them when they appear to
6 cross-examine Panel 14.

7 THE CHAIRMAN: Okay. Are there any
8 further comments with respect to the scoping of this
9 session?

10 MR. CASSIDY: Mr. Chairman, could I just
11 make one comment and I'm not on solid ground in making
12 this because I have to check with my secretary. It
13 appears I did not receive statements of issues from two
14 of the parties, the names of those parties are
15 irrelevant, and I've confirmed that my secretary didn't
16 receive them and if I did receive them and I missed
17 them, I retract my comments.

18 But can I just ask the Board to remind
19 parties to make -- part of the Board's order is that
20 these statements of issues not only be filed with the
21 Board and served on MNR but also be served on all the
22 other parties.

23 THE CHAIRMAN: Yes. That is essential if
24 these scoping sessions are going to be as productive as
25 possible, because it's the other parties who can see

1 what their counterparts are concerned about and it may
2 temper areas concerning their own examinations.

3 MR. CASSIDY: Thank you, Mr. Chairman.
4 And, of course, if I miss any of the parties in serving
5 upon them, I ask that they contact me.

6 THE CHAIRMAN: Well, if you haven't
7 received a couple, certainly go to those parties for
8 which you haven't received them and find out why you
9 weren't on the list or maybe it's just an isolated
10 incident with respect to this.

11 MR. CASSIDY: Thank you.

12 MR. FREIDIN: Mr. Chairman, just one last
13 comment. Again, a comment for reaction from the Board
14 on the record may be of assistance.

15 I think that the scoping sessions are
16 again very helpful. I think this one -- I think as we
17 go along they are getting -- we are getting better at
18 trying to refine or scope the issues. I think it would
19 really be helpful if parties who file statements of
20 issue could make every effort possible to have counsel
21 here when we deal with them so that we can indeed scope
22 as fully as possible.

23 THE CHAIRMAN: Well, that is a good
24 suggestion. The Board has felt all along that this is
25 a process - talking about scoping itself - that is a

1 matter of both education with respect to the parties'
2 participation in it and a learning curve for all of us
3 as to how productive it may or may not be.

4 Where we feel it has been most productive
5 is not necessarily cutting down the time of examining,
6 per se, but certainly in everybody gaining a better
7 understanding of what issues are of concern to which
8 parties and to the Board itself. It also offers
9 everybody an opportunity to review the evidence in
10 advance, give it some consideration, and has the
11 collateral benefit of allowing at least those charged
12 with putting in the direct evidence to tailor that
13 evidence to the concerns raised at the scoping
14 sessions. We have certainly found them to be of value
15 ourselves.

16 I might add that other panels of the
17 Environmental Assessment Board are experimenting with
18 scoping in other contexts and it is very likely, in my
19 view, that it will soon become a standard feature of
20 this type of hearing. We on this panel have more or
21 less pioneered it and we are refining it as we go
22 along.

23 But in response to your last comment, it
24 is helpful if all counsel for the parties who are
25 participating on a regular basis, if they can be here

1 for the scoping sessions to take part for those reasons
2 and perhaps part of the problem is, is that we are
3 scheduling these scoping sessions when not all of the
4 parties who are normally here on a less than continual
5 basis for some reason are not examining the particular
6 panel in question. And so perhaps the Board can be
7 more vigilant in trying to schedule these scoping
8 sessions at a time that may be more convenient to more
9 of the parties who may wish to participate.

10 But we will certainly give that
11 consideration as to whether or not we should do
12 something about ensuring that the parties are here for
13 the scoping sessions. We feel it's an important part
14 of the hearing process and we feel that it is
15 beneficial ultimately to both our understanding of
16 everything and the ultimate time it will take to
17 complete this hearing.

18 Very well. With respect to the schedule
19 for the rest of this week, we have made inquiries since
20 we broke around 5:30 and Ms. Swenarchuk is unable to
21 have her preparation for the examination complete by
22 this Wednesday and Mr. Edwards has indicated that if we
23 start tomorrow at 8:30, as we intended, he will likely
24 be through by 3:00 p.m. tomorrow afternoon and, as a
25 consequence, we're obliged to attend next week on

1 Thursday and Friday to pick up the evidence of the
2 panel containing Dr. Ritter and Mr. Kingsbury, and we
3 were intending to be here next Tuesday and Wednesday as
4 well sitting four days that week.

5 It appears from our canvass of everybody
6 who is remaining that we can complete the evidence by
7 starting next Tuesday afternoon at 1:00 and going
8 through Wednesday and during that time we will be able
9 to complete the evidence of -- or the cross-examination
10 of Nishnawbe-Aski Nation, Ms. Swenarchuk and Ms.
11 Seaborn and finish that by Wednesday evening and then
12 we would go on to Dr. Ritter's panel for Thursday and
13 Friday.

14 MR. FREIDIN: What about the following
15 week?

16 THE CHAIRMAN: Sorry?

17 MR. FREIDIN: What about OFAH?

18 MR. MARTEL: We are starting on the 11th.

19 THE CHAIRMAN: OFAH cannot attend next
20 week and, therefore, they will have to follow Dr.
21 Ritter's panel which was scheduled for I believe the
22 11th.

23 MR. FREIDIN: And I think the estimate is
24 two to three days, Dr. Quinney?

25 DR. QUINNEY: Yes, that's right.

1 MR. FREIDIN: So if they take two or
2 three days and we re-examine then we'll finish that
3 week.

4 THE CHAIRMAN: We should be able to
5 finish this panel that week as well as having completed
6 the pesticides area that Dr. Ritter is going to address
7 at the end of next week.

8 And then you will be ready to start in
9 with the Panel 15 following that. We may be able to
10 finish -- there is one week to go, as I calculate it,
11 before we go off to Dryden; is there not?

12 MR. FREIDIN: That's right. Our hope was
13 was that we would be able to finish the
14 evidence-in-chief of Panel 15 before we go to Dryden
15 and I think that is preferable from everybody's point
16 of view. We are certainly going to strive to do that.
17 It would be nice to be able to --

18 THE CHAIRMAN: Well, it appears that it
19 may be possible under these circumstances, therefore,
20 we will plan to rise tomorrow at three o'clock for the
21 remainder of this week.

22 MS. SEABORN: Mr. Chairman, I know the
23 Board is fully aware of this, but I just would like to
24 state for the record that with respect to Panel 14 my
25 client is again put in the position of not being able

1 to go last because of potential downtime next week.

2 I'm quite happy to accommodate the Board
3 in that regard, but I feel in these situations I need
4 to put on the record, just to protect the Ministry of
5 the Environment's position, that it should be
6 cross-examining last in the normal course.

7 THE CHAIRMAN: Well, the only one you
8 won't be cross-examining last on this panel will be
9 OFAH. We would intend to have Ms. Swenarchuk and NAN
10 go ahead of you.

11 MS. SEABORN: That's right.

12 THE CHAIRMAN: And you would come after
13 them, but because of the delay, because of Dr. Ritter
14 coming in the middle and OFAH's unavailability next
15 week, you will not go after them.

16 MS. SEABORN: I fully accept the
17 circumstances, Mr. Chairman. I'm quite happy to fill
18 the time.

19 THE CHAIRMAN: Okay. Well, thank you,
20 ladies and gentlemen. We will commence tomorrow at
21 8:30.

22 ---Whereupon the hearing adjourned at 8:35 p.m., to be
23 reconvened on Tuesday, August 29th, 1989, commencing
at 8:30 a.m.

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